CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 53

THE UNITED STATES OF AMERICA, PETITIONER

vs.

PAUL DAVID SHERIDAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 5, 1946
CERTIORARI GRANTED MAY 13, 1946

FILED MARCH 5, 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 914

PAUL DAVIS SHERIDAN, PETITIONER

vs.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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1 In United States District Court, Eastern District of Michigan

Docket entries

1944

Oct. 27—Indictment filed.

Oct. 27—Report of Grand Jury filed.

Nov. 2—Defendant arraigned, has counsel, Allan W. Thompson, waives reading, stands mute. Plea of not guilty entered. Bond fixed at $2,000.00. Remanded.

Nov. 7—Appearance of Defendant by LeRoy Payne, et al., attorneys filed.

Nov. 17—Resignation of Attorneys for defendant filed.

Nov. 29—Jury trial begins. Jurors empaneled and sworn. Continued to November 30, 1944.

Nov. 29—Waiver of assignment of counsel filed.

Nov. 30—Jury trial resumed. Defendant appearing in proper. Witnesses sworn. Argument of counsel. Charge of Court. Verdict of jury: Guilty as charged on all three counts.

Nov. 30—Defendant sentenced to imprisonment for five years on each of 3 counts to run concurrently. Commitment issued.

Dec. 2—Motion for new trial filed.

Dec. 12—Motion for new trial filed.

Dec. 12—Affidavit in opposition to defendant's motion for new trial filed.

Dec. 12—Order denying defendant's motion for a new trial filed and entered.

Dec. 12—Notice and grounds of appeal filed.

1945

Jan. 8—Commitment returned and filed.

Feb. 10—Certified copy of order of Circuit Court of Appeals granting leave to proceed in forma pauperis, filed.

2 In the District Court of the United States for the Eastern District of Michigan, Southern Division

No. 27992 (of the June Term, A. D., 1944)

UNITED STATES OF AMERICA, PLAINTIFF

vs.

PAUL DAVIS SHERIDAN, ALIAS P. H. D. SHERIDAN, ALIAS PAUL H. SHERIDAN, ALIAS A. J. SLOANE, ALIAS PHILIP H. SLOANE, ALIAS ARTHUR SLOAN, ALIAS ANDREW SLOANE, JR., ALIAS LAIRD H. MCDONALD, ALIAS DONALD HOUGH, DEFENDANT

Vio. Section 415 U. S. C. Title 18 (Transportation in Interstate Commerce of Falsely Made or Forged Securities)

Indictment

Filed October 27, 1944

The Grand Jurors of the United States of America empaneled and sworn to inquire in and for the body of the Southern Division of the Eastern District of Michigan, upon their oaths present: That heretofore, to wit: On the 19th day of July A. D. 1943, at the City of Jackson, County of Jackson, in the Southern Division of the Eastern District of Michigan, and within the jurisdiction of this Honorable Court, one Paul Davis Sheridan, alias P. H. D. Sheridan, alias Paul H. Sheridan, alias A. J. Sloane, alias Philip H. Sloane, alias Arthur Sloan, alias Andrew Sloane, Jr., alias Laird H. McDonald, alias Donald Hough, late of the Division and District aforesaid, did unlawfully, wilfully, knowingly, and feloniously, and with fraudulent intent, transport and/or cause to be transported in interstate commerce, from the City of Jackson, in the State of Michigan to the City of Cape Giradeau, in the State of Missouri, a certain falsely made, forged, altered, or counterfeited security to wit: A check in the amount of sixty two dollars and fifty cents ($62.50) payable to P. H. D. Sheridan and purporting to be signed as maker U. S. E. F. C., 14A A. J. Davis, Commissioner, the said check being drawn on the First National Bank, Cape Giradeau, Missouri, he the said defendant then and there well knowing the same to have been falsely
3 made, altered, forged, or counterfeited: Contrary to the form, force, and effect of the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

COUNT TWO

And the Grand Jurors aforesaid, upon their like oaths, do further present: That heretofore, to wit, on the 19th day of July A. D. 1943, at the City of Jackson, in the County of Jackson in the Southern Division, of the Eastern District of Michigan, and within the jurisdiction of this Honorable Court, one Paul Davis Sheridan, alias P. H. D. Sheridan, alias Paul H. Sheridan, alias A. J. Sloane, alias Philip H. Sloane, alias Arthur Sloan, alias Andrew Sloane, Jr., alias Laird H. McDonald, alias Donald Hough, did unlawfully, wilfully, knowingly, feloniously, and with fraudulent intent, transport and/or cause to be transported in interstate commerce from the City of Jackson, in the State of Michigan, to the City of Cape Giradeau, in the State of Missouri, falsely made, forged, altered, or counterfeited security to wit: A check in the amount of sixty two dollars and fifty cents ($62.50) dated July 15, 1943, drawn on the First National Bank, Cape Giradeau, Missouri, payable to P. H. D. Sheridan and purporting to be signed as maker by U. S. E. F. C.#14A A. J. Davis, Commissioner, he the said defendant then and there well knowing the same to be falsely made, altered, forged or counterfeited: Contrary to the form, force, and effect of the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

COUNT THREE

And the Grand Jurors aforesaid, upon their like oaths, do further present: That heretofore, to wit, on the 19th day of July A. D. 1943, at the City of Jackson, in the County of Jackson, in the Southern Division of the Eastern District of Michigan, and within the jurisdiction of this Honorable Court, one Paul Davis Sheridan, alias P. H. D. Sheridan, alias Paul H. Sheridan,
4 alias A. J. Sloane, alias Philip H. Sloane, alias Arthur Sloan, alias Andrew Sloane, Jr., alias Laird H. McDonald, alias Donald Hough, did unlawfully, wilfully, knowingly, feloniously, and with fraudulent intent, transport and/or cause to be transported in interstate commerce from the City of Jackson, in the state of Michigan to the City of Boston, in the State of Massachusetts, a certain falsely made, forged, altered, or counterfeited security to wit: a check in the amount of fifty dollars ($50.00) dated July 18, 1943 drawn on the First National Bank of Boston, Massachusetts, payable to "cash" and signed as maker by P. H. D. Sheridan, he the said defendant then and there well knowing the same to have been falsely made, altered, forged, or counterfeited: Contrary to the form, force, and effect of the Act

of Congress in such case made and provided, and against the peace and dignity of the United States.

JOHN C. LEHR,
United States Attorney.
(Signed) FRANCIS X. NORRIS,
Assistant United States Attorney.

This is a true bill.

(Signed) HARRY KOLTS, *Foreman.*

5 In United States District Court

[Title omitted.]

Arraignment

November 2, 1944

The defendant Paul Davis Sheridan, with aliases, being present in Court with his attorney Allen M. Thompson, and being arraigned on the indictment heretofore filed against him, waives the reading thereof and stands mute, whereupon a plea of not guilty is ordered entered by the Court.

Bail for said defendant is fixed at the penal sum of Two Thousand ($2,000.00) Dollars.

(Signed) FRANK A. PICARD,
U. S. District Judge.

6 In United States District Court

[Title omitted.]

Appearance for defendant

Filed November 7, 1944

To GEORGE M. READ, Esq.,
703 Federal Building,
Clerk of the above Court.

Please enter the appearance of LeRoy Payne and Allan M. Thompson, as attorneys for Paul Davis Sheridan, in the above cause.

(Signed) LEROY PAYNE,
ALLAN M. THOMPSON,
2101 Barlum Tower, Detroit 26, Michigan,
Cadillac 0109.

To JOHN C. LEHR, *United States Attorney.*
FRANK X NORRIS, *Assistant United States Attorney.*

Each of you will please notice that the undersigned have this day entered their appearance as attorneys for Paul Davis Sheridan, defendant in the above cause, and demand is made that the undersigned be given notice of all further proceedings.

(Signed) LEROY PAYNE,
ALLAN M. THOMPSON,
2101 Barlum Tower, Detroit 26, Michigan.

Dated November 4, 1944.

8 In United States District Court

[Title omitted.]

Resignation of attorneys for defendant

Comes now LeRoy Payne and Allan M. Thompson, Attorneys of record for the above named defendant Paul Davis Sheridan and hereby resign as such attorneys for defendant.

(Signed) LEROY PAYNE,
ALLAN M. THOMPSON,
Attorneys for Defendant.

The foregoing resignation is hereby accepted.

(Signed) PAUL DAVIS SHERIDAN,
Defendant.

Dated November 16th, 1944.

9 In United States District Court

[Title omitted.]

Jury record

Filed November 29, 1944

The parties in this cause being present in Court, ready for trial and trial ordered, thereupon comes a jury, to wit:

1. Caroline Lane
2. Laura G. Calwell
3. William J. Hubble
4. Gloria Northcross
5. Adele J. Ball
6. Dorothy E. Cummings
7. Frances A. Ormsby
8. Carrie Sparling
9. Sabria P. Lamb
10. Elizabeth B. Shields
11. Frank A. Barlage, Jr.
12. Mary L. Evans

who being duly empanelled and sworn well and truly to try the issue joined, sit together to hear the statements of counsel, proofs and testimony introduced.

Examined, approved, and ordered entered.

(Signed) FRANK A. PICARD,
U. S. District Judge.

10 In United States District Court

[Title omitted.]

Waiver of assignment of counsel

Filed November 29, 1944

This has been misplaced or lost. Although careful search has been made it cannot be found.

11 In United States District Court

[Title omitted.]

Jury verdict

Filed November 30, 1944

The defendant Paul Davis Sheridan, with aliases, being present in Court, and the jury heretofore empaneled being again in Court and having heard the proofs and testimony of witnesses, the arguments of counsel and the charge of the Court, retire from the Bar thereof under the charge of officers duly sworn for that purpose, to consider their verdict, and after being absent for a time come into Court again, and in the presence of said defendant say upon their oaths that they find the said defendant Paul Davis Sheridan, with aliases, guilty of the charges in the indictment filed herein.

Examined, approved, and ordered entered.

(Signed) FRANK A. PICARD,
U. S. District Judge.

12 In The District Court of the United States for the Eastern District of Michigan, Southern Division

No. 27992

UNITED STATES OF AMERICA,

vs.

PAUL DAVIS SHERIDAN, alias P. H. D. SHERIDAN, alias PAUL H. SHERIDAN, alias A. J. SLOANE, alias PHILIP H. SLOANE, alias ARTHUR SLOAN, alias ANDREW SLOANE, JR., alias LAIRD H. McDONALD, alias DONALD HOUGH

Judgment and sentence

Filed November 30, 1944

The defendant, Paul Davis Sheridan, alias P. H. D. Sheridan, alias Paul H. Sheridan, alias A. J. Sloane, alias Philip H. Sloane, alias Arthur Sloane, alias Andrew Sloane, Jr., alias Laird H. McDonald, alias Donald Hough, being present in Court, and having been fully informed of his constitutional right to counsel, and having been asked whether he desired counsel assigned, and having stated he did not desire the assistance of counsel, and the defendant having desired to plead his own case, and having been found guilty by jury of the charges in said indictment contained and now being before the bar of the Court for sentence and inquired of by the Court if he had anything to say why sentence should not be imposed, and the Court having fully considered all that said defendant had to say in his behalf, thereupon the court does now sentence said defendant to be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment as follows:

Under Count 1, imprisonment in a Penitentiary for and during the term and period of (5) five years.

Under Count 2, imprisonment in a Penitentiary for and during the term and period of (5) five years, and

Under Count 3, imprisonment in a Penitentiary for and during the term and period of (5) five years, said terms of imprisonment to run concurrently, beginning on the date on which he is received at the Penitentiary for service of said sentence, or if said prisoner shall be committed to a Jail or other place of deten-

tion to await transportation to the place at which his sentence is to be served, said sentence shall begin on the date on which he is received at such jail or other place of detention.

(Signed) FRANK A. PICARD,
United States District Judge.

Approved as to form:

(Signed) FRANCIS X. NORRIS,
Assistant United States District Attorney.

13 In United States District Court

[Title omitted.]

Motion for a new trial

Filed December 2, 1944

Comes now the defendant in the above entitled cause and respectfully petitions of your Honorable Court that a new trial be granted.

Said petition is based upon the following facts and allegations:

1. Defendant respectfully submits that he was not granted sufficient time for the proper preparation of his case. He was taken from the Wayne County Jail at eleven A. M. on the 29th day of November 1944 and was required to proceed to trial at two P. M. of the same day. No other notice of the trial date had been furnished the defendant.

2. Defendant respectfully submits that he has new and additional evident which if presented to the jury would result in a different verdict favorable to the defendant. Defendant respectfully shows that there was no lack of diligence on his part and that this situation is the result of the fact that he was not granted sufficient time to prepare his case and to bring witnesses from distant cities.

14 3. Defendant respectfully alleges that the Trial Court erred in refusing to grant a severance of Count 3 which constitutes and alleges an offense entirely foreign to that charged in Counts 1 and 2 of the indictment.

4. Defendant respectfully submits that all evidence introduced concerning Count 3 was prejudicial to the defense of the defendant in Counts 1 and 2.

5. Defendant respectfully submits that the plaintiff failed to establish a prima facie case of the material elements alleged in the indictment, to wit: That the said securities were falsely made, forged, or altered and were in fact transported in interstate commerce between the States of Michigan and Missouri and between the States of Michigan and Massachusetts.

6. Defendant respectfully submits that no direct evidence was introduced to show that said securities were at any time transported in interstate commerce.

7. Defendant respectfully submits that the notices and printed stickers attached to plaintiff's Exhibits Numbers 2, 3, and 4, which were admitted into evidence over the objection of the defendant, were improperly and illegally introduced because they do not contain the certification that said stickers and notices were executed by persons of proper authority and were in fact placed upon said securities by unknown persons.

8. Defendant respectfully submits that he was denied his constitutional right to be confronted by witnesses from either the First National Bank of Cape Girardeau or the First National Bank of Boston, Massachusetts, or by representatives of the United States Department of Commerce.

9. Defendant respectfully submits that the Court erred in admitting in evidence the testimony of one Charles E. Green of the National Bank of Jackson, Michigan, concerning securities identified as Exhibits 2 and 3, all of said testimony being hearsay.

10. Defendant respectfully submits that the Court erred in admitting into testimony, over the objections of the defendant, the testimony of one Fred E. Foster, a police officer of Jackson, Michigan, concerning the alleged arrest of the defendant, whereas, in fact, all such testimony constituted hearsay.

11. Defendant respectfully submits that the Court erred in admitting the testimony of one John W. Wolfe of the Federal Bureau of Investigation concerning an alleged investigation in Washington, D. C., of which he had no personal knowledge and because all such testimony was hearsay.

12. Defendant respectfully submits that the Trial Court erred in refusing to admit into evidence the defendant's bank book of the First National Bank of Boston, Massachusetts, previously identified by one Robert V. Green; said bank book containing the identifying signature of the defendant and deposits in said bank as follows:

June 5, 1943	$1,250.00
June 7, 1943	341.85
June 14, 1943	841.70
July 3, 1943	604.95

The defendant was charged with and convicted of the offense of issuing a bank check drawn against the said bank and refusal of the Court to admit primary evidence was prejudicial to defendant's case.

13. Defendant respectfully submits that the Trial Court erred in refusing to admit into evidence a bank book issued to the defendant by the Chase National Bank of the City of New York, indicating numerous deposits totalling Five Thousand One Hun-

dred Twenty-two Dollars and Thirty-five cents ($5,122.35) after the said bank book had been properly identified by one Robert V. Green.

16 14. Defendant respectfully submits that the Trial Court erred in refusing to give defendant's requested instruction concerning expert witnesses to the effect that such testimony should be considered by the jury only as an opinion and not as direct testimony.

15. Defendant respectfully submits that the Trial Court erred in failing to give instructions to the jury to the effect that the evidence concerning Count 3 was not applicable to Counts 1 and 2 of the Information.

16. Defendant respectfully submits that the Trial Court erred in instructing the jury that two of the three requisites of the indictment, to wit, first, that the defendant did in fact transport or cause to be transported in interstate commerce certain securities; and secondly, that said securities actually were transported in interstate commerce, whereas there was no evidence supporting this contention.

Wherefore, the defendant respectfully pleads that a new trial be granted in the above entitled cause and that the judgment of conviction rendered be vacated and set aside.

Respectfully submitted.

(Signed) PAUL DAVIS SHERIDAN,
Attorney in Propria Persona.

Dated: This 2nd day of December A. D., 1944.

18 In United States District Court

[Title omitted.]

Memorandum in support of motion for a new trial

Filed December 12, 1944

To the Honorable FRANK A. PICARD, *Judge of the United States District Court for the Eastern District of Michigan, Southern Division:*

Comes now the Defendant, and in support of his Motion for a new trial made on the 3rd day of December 1944, respectfully shows the Court:

1. The new and additional evidence which the defendant could have obtained had he been granted sufficient time, would have consisted of the following:

(a) The Manager of the Edgewater Beach Hotel, 5319 Sheridan Road, Chicago, Illinois, will testify that the Defendant was a guest of the said hotel, and that he had luncheon at the said hotel at approximately 1:00 o'clock p. m. on the 17th day of July 1943;

(b) The Manager of the Deerpath Inn, Deerpath Road, Lake Forest, Illinois, will testify that the Defendant, in the company of Lt. Col. James S. Pickett, U. S. M. C., was present at that hotel at approximately 5:00 o'clock p. m. on the afternoon of July 19, 1943;

(c) The Manager of the Schroeder Hotel, Milwaukee, Wisconsin, will testify that the Defendant, in the company of the aforementioned Lt. Col. Pickett, checked into the said hotel at approximately 9:00 o'clock p. m. on July 17, 1943, and remained in said hotel as a guest until noon of the following day. The porter of said hotel will further testify that he obtained transportation on the Northwestern Railway "400" train to Eau Claire, Wisconsin.

(d) The Manager of the Eau Claire Hotel, Eau Claire, Wisconsin, will testify that the Defendant, in the company of Lt. Col. Pickett, checked into the Eau Claire Hotel at approximately 9:30 on July 18, 1943;

(e) Mr. James Hutchins, Vice President and General Manager of the United States Rubber Company (Gillette Division), Eau Claire, Wisconsin, will testify that the Defendant signed a guest register in the office of the said Company at approximately 1:00 o'clock p. m. on the 19th day of July 1943; this being a war plant, and full identification and signature of each visitor being required.

Wherefore, the Defendant respectfully submits that the above testimony would completely and absolutely establish an alibi and contravert the testimony given at the trial in this case.

The Defendant has forwarded to the First National Bank of Boston, Massachusetts, and to the Chase National Bank of the City of New York, two bank books for certification, together with a request to the attorneys in that city, that they obtain depositions concerning the bank accounts which figured in this trial. Additional evidence also could not have been obtained within the short period of time granted the Defendant for the preparation of this case.

Respectfully submitted.

(Signed) PAUL DAVIS SHERIDAN,
Attorney in Propria Persona.

20 In United States District Court

[Title omitted.]

Affidavit in opposition to defendant's motion for new trial

Filed December 12, 1944

STATE OF MICHIGAN,
County of Wayne, ss:

Francis X. Norris, Assistant United States Attorney for the Eastern District of Michigan, having been first duly sworn, deposes and says, that as such Assistant United States Attorney, he was assigned to the above-entitled cause, and personally conducted the prosecution of this defendant.

That this defendant was represented by a member of the Bar of this Court, Mr. Allan M. Thompson at the time of his examination before J. Stanley Hurd, United States Commissioner for this District, and that Mr. Thompson continued to represent this defendant up to, and including the day of his arraignment, upon the indictment November 2, 1944.

That at that time, this defendant, and his Attorney were advised that this case would proceed to trial at an early date, as the defendant was then in custody, and apparently unable to procure bond.

That Mr. Thompson thereafter, on November 16, 1944, withdrew his appearance as attorney for the defendant, and thereafter on November 20, 1944, the defendant in open court, refused the court's offer to appoint counsel to assist in his defense. He advised the Court that he wished to conduct his own case. The Court then urged that he prepare for trial.

That during the morning of November 29, 1944, the defendant assured this affiant, that he was ready for trial; that his
21 wife was in contact with him and had summoned a number of witnesses, that one of them was an Attorney, and that all of the witnesses, including the attorney, were then enroute to the City of Detroit, Michigan.

That the defendant stated he needed no assistance in the matter of procuring the attendance of witnesses, suggesting that a jury be empaneled that day, and proofs be introduced the following morning, November 30, 1944.

That pursuant to agreement, this was done, the Government completing the introduction of its evidence November 30, 1944, at about 11:15 A. M.

That about the hour 11 A. M. that morning, the Court called the defendant to the bench, and in the presence of this affiant, asked the defendant if he was ready to proceed. The defendant

assured the Court that he was ready with seven alibi witnesses and that they would arrive momentarily.

That the Government, having rested its case, the defendant thereupon stated to the Court that he also rested. That never at any time did this defendant request the Court or counsel for the Government for additional time to summon witnesses or prepare his defense, but on the contrary, stated repeatedly, that he was ready to proceed.

That this defendant stated to this affiant, and the Court, that he would establish an alibi in his defense of this case, that he was never in the City of Jackson, Michigan (where the checks were cashed) during his life. He offered no such testimony, and indeed admitted responsibility for the endorsements appearing on the checks, and the actual cashing of these worthless obligations.

In the cross-examination of the witness, Robert V. Green, one of the three persons defrauded, it was brought out that, at the time the check was presented to Mr. Green, the defendant produced and exhibited two bank books. An attempt was made to have the witness identify two bank books which the defendant produced from his person as the same two bank books which were upon him at the time the check was presented. The witness was unable to identify the books, admitting, however, that there were two bank books presented to him by the defendant in identifying himself at the time the check was cashed.

22 That the defendant was not sworn as a witness in the case, and no further attempt was made to properly identify the bank books produced from the person of the defendant during the trial, and said bank books were never offered in evidence in the case.

That the three counts of this indictment referred to three separate checks. That the Government introduced evidence under each count establishing every essential element of the offense charged, namely: that this defendant presented each of the three checks for payment, that each check was drawn on a foreign bank, that each check was returned from that bank marked "no account," that restitution was not made in any instant, and that each of the persons that accepted these checks were defrauded in the amount set forth in the indictment.

Further deponent saith not.

(Signed) FRANCIS X. NORRIS,
Assistant U. S. Attorney.

Subscribed and sworn to before me this 5th day of December A. D. 1944.

(Signed) JOHN E. RAY,
Notary Public, Wayne County, Michigan.

My commission expires February 24, 1945.

23 In United States District Court

[Title omitted.]

Order denying defendant's motion for a new trial

Filed December 12, 1944

This cause having come on for hearing upon the defendant's motion for a new trial and the Court having considered said motion and the affidavit filed by the Government in opposition to the motion and being duly advised in the premises, finds specifically, that the instant motion has not been made in good faith inasmuch as the instant case was defended on the theory that this defendant was present in the City of Jackson, Michigan at the time the checks in question were cashed.

Wherefore, it is ordered that the said motion be and the same is hereby denied.

(Signed) FRANK A. PICARD,
United States District Judge.

24 In United States District Court

[Title omitted.]

Notice of appeal

Filed December 12, 1944

The defendant, Paul Sheridan hereby gives notice that he appeals to the United States District Court of Appeals, Sixth Circuit, from the order of the Court entered in the above entitled cause, denying the defendant's motion for a new trial and from the judgment of conviction entered herein.

Defendant's appeal will be based upon the following facts and allegations:

1. That the Trial Court erred in matters of law during the course of the trial.
2. That the verdict of the jury is contrary to the evidence.
3. That the verdict of the jury is not supported by sufficient evidence.

25 4. That the Trial Court erred in admitting certain testimony and documents into evidence over the objection of the defendant.

5. That the defendant was denied his constitutional rights to be confronted by witnesses.

6. That the plaintiff did not establish a prima facie case to the effect that the defendant did unlawfully, knowingly and feloniously, and with fraudulent intent, transport and/or cause to be transported in interstate commerce from the city of Jackson in the State of Michigan to the city of Cape Girardeaux in the State of Missouri, or from the City of Jackson in the State of Michigan to the City of Boston, in the State of Massachusetts certain falsely made, forged, altered or counterfeit securities.

7. That the Court erred in giving certain instructions to the jury and in refusing to give certain instructions requested by the defendant.

(Signed) PAUL DAVIS SHERIDAN,
Attorney in Propria Persona.

Dated: This 12th day of December 1944.

26 *Certificate of designation*

I, the undersigned, authorized representative of the Attorney General of the United States of America, hereby designate United States Penitentiary, Terre Haute, Ind., as the place of confinement wherein the said Defendant shall serve the sentence herein imposed.

Dated: Nov. 30, 1944.

JOHN J. BARC,
United States Marshal,
Authorized Representative of the
Attorney General of the United States.

I have executed the within writ in the manner following: to wit: On Nov. 30, 1944, I delivered said Paul Davis Sheridan to the Jailer of the Wayne County Jail, Detroit, temporarily pending transfer to the institution herein designated for the service of sentence, and on December 26, 1944, I delivered said Paul Davis Sheridan to the Warden of United States Penitentiary at Terre Haute, Ind., together with a copy of this commitment.

JOHN J. BARC,
United States Marshal.
By (Signed) JOHN W. INGRAM,
Deputy.

27 In United States Circuit Court of Appeals for the Sixth Circuit

No. 9970

[Title omitted.]

Order granting leave to proceed in forma pauperis

Filed February 10 1945

The motion of appellant for leave to proceed in forma pauperis is granted and appellant is directed to file four legible typewritten copies of the record on appeal and of his brief.

Approved for Entry:

[SEAL] XEN HICKS, *Circuit Judge.*

A true copy.
Attest.

(Signed) J. W. MENZIES,
Clerk, U. S. C. C. A., Sixth Circuit.

28 [Clerk's certificate to foregoing transcript omitted in printing.]

30 In United States District Court

[Title omitted.]

Order to transmit exhibits

Filed May 28, 1945

Upon reading and filing the Stipulation entered into between Paul Davis Sheridan, defendant and appellant, and John C. Lehr, United States Attorney and Francis X. Norris, Assistant United States Attorney, counsel for the United States of America, that Government's exhibits 2, 3, and 4 be deposited with the Clerk of the Court to be forwarded to the United States Circuit Court of Appeals for the Sixth Circuit at Cincinnati, Ohio, to be considered by said Court as physical exhibits;

Wherefore, it is ordered and the Clerk of this Court is directed to accept Government's exhibits 2, 3, and 4 and to forward the same to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit at Cincinnati, Ohio, in accordance with the stipulation entered into by respective parties.

FRANK A. PICARD,
United States District Judge.

31 In United States District Court

[Title omitted.]

Stipulation re exhibits

It is hereby stipulated by and between Paul Davis Sheridan, defendant and appellant herein, and John C. Lehr, United States Attorney, and Francis X. Norris, Assistant United States Attorney, counsel for the United States of America, that original Government exhibits numbered 2 and 4 and photostatic copy of Government exhibit number 3 be deposited with the Clerk of the Court and be forwarded by said Clerk of the Court to the United States Circuit Court of Appeals for the Sixth Circuit at Cincinnati, Ohio to be considered by said Court as physical exhibits in said cause.

JOHN C. LEHR,
United States Attorney.
FRANCIS X. NORRIS,
Assistant U. S. Attorney.
PAUL DAVIS SHERIDAN,
Defendant and Appellant.

Dated this 9th day of May 1945.

32 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 9970

PAUL DAVIS SHERIDAN, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Statement of evidence

Filed May 28, 1945

33 GOVERNMENT'S TESTIMONY

Harriett Whiteman, testified that for the past three years she has been the Chief Clerk of the Otsego Hotel, Jackson, Michigan, and that the defendant, whom she identified in Open Court, checked into the said Otsego Hotel in the evening of Sunday, the 18th day of July 1943. (Exhibit #1, a hotel registration card, admitted without objection.)

She further testified that at an unspecified hour on Monday, July 19th, 1943, the defendant checked out of the hotel, and at that time presented a check of ($50.00) fifty dollars, dated July

18, 1943, drawn on the "First National Bank of Boston, Massachusetts," payable to "Cash" and bearing the endorsement, "P. H. D. Sheridan, 230 Park Avenue, New York." (Exhibit #2, a check was identified and admitted into evidence over defendant's objection.)

Miss Whiteman also testified that she did not see the Defendant endorse the check; but that she cashed the same, deducting a hotel bill of ($3.50) paying the defendant ($46.50) in cash and that she next saw the check when it was given to her by the hotel auditor. It then bore the same endorsements as appeared upon it when offered in evidence. That the check was returned to the hotel unpaid and that the hotel had never been reimbursed for the loss.

Robert V. Green, testified that he is the Manager of the Young's Jewelery Store in Jackson, Michigan, and that the Defendant, whom he identified in Open Court, came into the Young's jewelery story in Jackson, Michigan, at about noon on Monday, July 19th, 1943, and looked at some luggage which he wished to buy for his son at Camp Custer, Michigan. Mr. Green testified that the defendant selected two articles of luggage valued at $36.00, and presented in payment a check for ($62.50) drawn on the "First National Bank of Cape Girardeau, Missouri," dated July 15, 1943, payable to "P. H. D. Sheridan" and signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner," which check it was
34 stated had been received in the course of his business. (Exhibit #3, a check was identified and admitted into evidence over Defendant's objection.)

The witness further stated that the defendant at the time the check was presented showed two bank books. He stated that he did not see the defendant endorse the check, but that he accepted it in payment of the luggage valued at $36.00, paying the defendant $26.50 in change, and that he deposited the check in the Jackson Bank and Trust Company of Jackson, Michigan, and that said check was later returned unpaid, and that his employer has never been reimbursed for the loss.

Upon cross-examination the witness affirmed his previous identification of the defendant. Upon being shown two bank books the witness could not identify them as being the two bank books shown to him by the defendant at the time the Exhibit #3 was presented to him for payment. (Defendant's motion to have the said bank books admitted into evidence was denied by the Court.)

Charles E. Greene testified that he has been employed by the National Bank of Jackson, Michigan, for the past twenty years and is an Assistant Cashier of the said bank. He stated that about noon on Monday, the 19th day of July 1943, the defendant, whom he identified in open Court, came into the bank and presented a

check for $62.50 dated July 15, 1943, payable to "P. H. D. Sheridan," signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner" drawn against the "First National Bank of Cape Girardeau, Missouri." (The check was marked "Exhibit #4," identified and admitted into evidence over defendant's objection.) Mr. Greene further testified that he accompanied the Defendant to a Paying Teller's window in the bank; that he placed his initials on the face of the check in approval of its payment. The witness further testified that the Paying Teller of the bank thereupon paid the Defendant $62.50 in cash, that the records of the bank showed said check was forwarded to the bank upon which it was drawn for payment and that the check was later returned to a basket on his desk in the bank marked unpaid. He further testified that the bank had not been reimbursed for the loss.

35 Mr. Greene was qualified as an expert on banking matters. He read to the jury the various rubber stamp endorsements appearing on the reverse side of the three checks and stated that from the endorsements on the three checks, Exhibits #2, #3, and #4, all were presented for payment at Jackson, Michigan, that Exhibit #2 had been forwarded to Boston, Massachusetts, and Exhibits #3 and #4 had been forwarded to Missouri, and all three checks had been returned unpaid to the forwarding bank marked no account. This testimony was taken over defendant's objection.

On cross-examination the witness admitted that only one of the three checks was deposited in his employer bank in Jackson, Michigan; that he did not know of his own personal knowledge who wrote the words "No Account" on the face of the checks or on the printed documents attached thereto, and that he did not know who placed the endorsements on the reverse side of the checks.

Fred E. Foster; testified that he is a Police Officer employed by the City of Jackson, Michigan, and stated that in July 1943, he was called upon to investigate the transactions in Jackson, Michigan, of one "P. H. D. Sheridan" and that he had learned through Police Channels that the defendant had been arrested in Eau Claire, Wisconsin, on the 20th day of July 1943. (Objection by defendant on grounds of hearsay.)

On cross-examination the witness admitted that he had never seen nor talked to the Defendant, at any time prior to defendant's examination before the United States Commissioner in Detroit, Michigan on October 20th, 1944.

John W. Wolfe: testified that he is an Agent of the Federal Bureau of Investigation, that his office had conducted an investigation in Washington, D. C., and that the United States Department of Commerce has no agency "U. S. E. F. C. 14A," or one "A. J. Davis, Commissioner." (Objection by defendant that such testimony constituted hearsay.)

On cross-examination the witness admitted that the Defendant was not present during said investigation in Washington,
36 D. C., and that he, the witness, had not personally conducted said investigation, and based his statements on reports prepared by his Department.

Order denying motion to dismiss

The Defendant's motion to dismiss the case on the grounds that the Plaintiff had failed to establish that the checks were in fact false, and that the checks were in fact transported in Interstate Commerce, Denied by the Court.

Defendant's motion to keep from the jury various aliases set forth in the indictment as prejudicial, was granted by the Court.

The Plaintiff thereupon closed.

The defendant closed without offering any evidence.

37 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 9970

[Title omitted.]

Stipulation as to statement of evidence

It is hereby stipulated and agreed by and between Paul Davis Sheridan, appellant and John C. Lehr, United States Attorney for the Eastern District of Michigan and Francis X. Norris, Assistant United States Attorney for said District, attorneys for the United States of America, the instant case not having been stenographically reported that the foregoing statement of evidence consisting of four pages prepared from memory and notes made during the course of the trial, substantially sets forth the testimony and evidence presented and that the same, upon the Court's approval be made a supplementary part of the transcript of record filed in the above entitled cause.

PAUL DAVIS SHERIDAN,
Appellant in Propria Persona.
JOHN C. LEHR,
United States Attorney.
FRANCIS X. NORRIS,
Asst. U. S. Attorney,
Attorneys for Appellee.

Dated this 28 day of May 1945.
Approved:

Frank A. Picard,
HON. FRANK A. PICARD,
U. S. District Judge.

38 [Clerk's certificate to foregoing transcript omitted in printing.]

39 In United States Circuit Court of Appeals, Sixth Circuit

Cause argued and submitted

October 5, 1945

(Before: ALLEN and MARTIN, Circuit Judges and RAYMOND, District Judge.)

This cause is argued by appellant, per se, and by Vincent Fordell for appellee and is submitted to the court.

In United States Circuit Court of Appeals

Judgment

Entered November 19, 1945

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the Judgment of the said District Court in this cause be and the same is hereby reversed and remanded with direction that the case be dismissed.

40 In United States Circuit Court of Appeals, Sixth Circuit

No. 9970

PAUL DAVIS SHERIDAN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the Eastern District of Michigan

Decided November 19, 1945

Before ALLEN and MARTIN, Circuit Judges, and RAYMOND, District Judge.

Opinion

MARTIN, Circuit Judge. Upon his trial in the district court for alleged violation of the National Stolen Property Act, U. S.

C. A., Title 18, Sec. 415, Paul Davis Sheridan waived counsel proffered him by the trial court and chose to defend himself. He was convicted by the verdict of a jury and was sentenced by the district judge to concurrent terms of imprisonment of five years on each of the three counts of the indictment.

From the indictment and from the approved stipulated statement of evidence filed as a supplemental transcript of record, it appears that; on July 19, 1943, Sheridan obtained money and other value by negotiating in Jackson, Michigan, three falsely made checks. On Sunday evening, July 18, 1943, he registered at the Otsego Hotel in that city. On the next day, when checking out of the hotel at an unspecified hour, Sheridan presented to its chief clerk a check for $50.00, dated July 18, 1943, drawn on the First National Bank of Boston, Massachusetts, payable to cash, signed as maker by P. H. D. Sheridan, and bearing the endorsement of "P. H. D. Sheridan, 230 Park Avenue, New York."[4] (After deducting $3.50 in payment of Sheridan's hotel bill, the hotel clerk gave him $46.50 in cash for the check, which later was returned unpaid to the hotel.

41 Around noon of the same day, Sheridan entered a jewelry store in Jackson and purchased from the manager, for $36.00, two articles of luggage which he said he wished to buy for his son at Camp Custer, Michigan. He presented in payment a check for $62.50, dated July 15, 1943, drawn on the First National Bank of Cape Girardeau, Missouri, payable to P. H. D. Sheridan, and purporting to be signed as maker by "U. S. E. F. C. 14A A. J. Davis, Commissioner." When offering this check, Sheridan exhibited two bank books. The store manager did not see him endorse the check, but accepted it in payment for the luggage and handed him $26.50 in change. The check, deposited by the jeweler in the Jackson Bank and Trust Company, was later returned unpaid.

The third transaction, also around noon of July 19, 1943, embraced in one of the three counts of the indictment, was the obtaining by Sheridan of $62.50, in cash, by presentation to the National Bank of Jackson of a check for $62.50, dated July 15, 1943, drawn on the First National Bank of Cape Girardeau, Missouri, payable to P. H. D. Sheridan and purporting to be signed as maker by "U. S. E. F. C. 14A A. J. Davis, Commissioner." The records of the bank show that the check was forwarded for payment to the bank upon which it was drawn and was later returned marked "unpaid" to a basket on the desk of the assistant cashier of the National Bank of Jackson, Michigan. This official, as an expert, explained to the jury the various rubber stamp endorsements appearing on the three checks described in the respective counts of the indictment, and testified that it was obvious

that all three checks had been forwarded to the drawee banks and had been returned to the forwarding banks unpaid, and marked: "No Account." The victims of Sheridan's transactions were not reimbursed for their losses.

An agent of the Federal Bureau of Investigation testified that, from an investigation conducted in Washington, D. C., it was ascertained that the United States Department of Commerce has no such agency as "U. S. E. F. C. 14A," and that "A. J. Davis, Commissioner," is a nonexistent person.

Sheridan cross-examined the Government's witnesses, but did not take the stand in his own behalf. When the district attorney rested, the defendant moved that the case be dismissed on the ground that the Government had failed to establish that the checks involved were in fact false, and upon the further
42 ground that the checks had not been transported, or caused to be transported, by him in interstate commerce within the meaning of the Federal statute upon which the indictment was based. The motion to dismiss was denied.

A motion for new trial, subsequently made, was overruled; and, on this appeal from the judgment of sentence and conviction below, Sheridan presents the same points which he urged in the trial court. Only one of these assignments of error need be discussed. The vital issue which he raises is that he was improperly convicted under U. S. C. A., Title 18, Section 415,[1] of transporting or causing to be transported in interstate commerce falsely made securities, where the evidence discloses that "the only use of interstate commerce was by banks which, after cashing certain checks, transported them to obtain reimbursement."

Sheridan preferred to represent himself personally on his appeal to this court, and was permitted to appear in propria persona at the hearing. He made an oral argument and has filed three briefs in support of his points on appeal. He insists that his conviction and sentence should be set aside upon the controlling authority of Kann v. United States, 323 U. S. 88, decided on December 4, 1944, since he was tried and sentenced in the district

[1] Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of $5,000 or more theretofore stolen, feloniously converted, or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, feloniously converted, or taken, *or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited*, or whoever with unlawful or fraudulent intent shall transport, or cause to be transported in interstate or foreign commerce any bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or fitted to be used in falsely making, forging, altering or counterfeiting any security, or any part thereof, *shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both: Provided*, That the provisions of this section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of (1) an "obligation or other security of the United States" as defined in section 261 of this title or (2) an obligation, bond, certificate, security, treasury note, bill, promise to pay, or bank note, issued by any "foreign government" as defined in section 288 of this title, or by a bank or corporation of any foreign country. May 22, 1934, c. 333, Sec. 3, 48 Stat. 794, as amended Aug. 3, 1939, c. 413, sec. 1, 53 Stat. 1178. [Italics supplied.]

court. In that case, the Supreme Court, in a five to four decision, reversed a conviction under the Mail Fraud Statute [U. S. C. A., Title 18, Sec. 338], upon the ground that an essential element of the offense is that the mails be used for the purpose of
43 executing the fraudulent scheme; and that, the participants in the scheme having obtained money by cashing checks at banks which thereupon became holders in due course, subsequent mailings of the checks by the banks to the drawees were not for the purpose of executing the scheme within the meaning of the statute.

Considering it a fair inference that the defendants who drew the checks and those who cashed them believed that the banks which took them would mail them to the banks on which they were drawn, the Supreme Court, nevertheless, said [323 U. S. 94]: "The banks which cashed or credited the checks, being holders in due course, were entitled to collect from the drawee bank in each case and the drawer had no defense to payment. The scheme in each case had reached fruition. The persons intended to receive the money had received it irrevocably. It was immaterial to them, or to any consummation of the scheme, how the bank which paid or credited the check would collect from the drawee bank. It cannot be said that the mailings in question were for the purpose of executing the scheme, as the statute requires." The following authorities were cited: McNear v. United States, 60 F. (2d) 861 (C. C. A. 10); Dyhre v. Hudspeth, 106 F. (2d) 286 (C. C. A. 10); Stapp v. United States, 120 F. (2d) 898 (C. C. A. 5); United States v. McKay, 45 F. Supp. 1001 (opinion of District Judge Miller, sitting by designation in the Eastern District of Michigan). The Supreme Court stated further that cases such as United States v. Kenofskey, 243 U. S. 440, where the mails are used prior to and as one step toward the receipt of the fruits of the fraud, were to be distinguished, as were likewise those where the use of the mails is a means of concealment so that further frauds which are part of the scheme may be perpetrated. Examples were cited: United States v. Lowe, 115 F. (2d) 596 (C. C. A. 7); United States v. Riedel, 126 F. (2d) 81 (C. C. A. 7); Dunham v. United States, 125 F. (2d) 895 (C. C. A. 5).

The dissenting Justices in the Kann case were of opinion that the fraudulent scheme had not reached fruition at the time the collecting bank cashed the checks, but that it was a continuing venture, and that the use of the mails was crucial to its total success.

In the aspect of both the majority and the minority views as expressed in the Kann case, that authority would plainly indicate that the judgment of sentence and conviction should be reversed in the instant case. Here, Sheridan obtained the full fruits of

his fraud without the use of the United States mails or
44 any other means of interstate transportation. His fraudulent scheme had been fully consummated before there was any interstate transportation of the falsely made checks, defined as securities within the sweep of the statute. It is no more logical to say that Sheridan caused the checks to be transported in interstate commerce than it would have been to say that the conspiring defendants in the Kann case caused the checks to be mailed for the purpose of executing their fraudulent scheme; inasmuch as the victims cashed the checks falsely made by Sheridan and became holders in due course, just as did the banks which cashed or credited the checks in the Kann case.

The point made by the Government that the language of the two statutes is different seems immaterial; for, in the one, mailing or causing to be mailed is the gist of the offense, and in the other transporting or causing to be transported in interstate commerce is the essential ingredient of the crime. As was said in Pine v. United States, 123 F. (2d) 825, 829 (C. C. A. 8): "The gist of the offense, however, is the transportation of these described spurious instruments in interstate commerce. Having them in possession or even attempting to pass them as genuine was not a Federal offense under this statute. It was therefore of vital importance to prove that the instruments were transported or caused to be transported by someone in interstate commerce." In that case, the record on review was found to disclose insufficient evidence of interstate transportation to constitute proof of the corpus delicti, and accordingly it was held that the trial court should have granted the motion of the defendant for a directed verdict. The same is true here. The frauds perpetrated by Sheridan may be punishable as crimes by the laws of Michigan, but are not cognizable under Federal law.

The judgment of conviction and sentence is reversed, with direction that the case be dismissed.

45 In United States Circuit Court of Appeals

Order extending time

Filed December 8, 1945

The petition of the United States Attorney for the Eastern District of Michigan, for extension of time to December 31, 1945, in which to file a petition for rehearing, is granted, upon the express condition that the appellant prisoner, Paul Davis Sheridan, shall not be held in custody pending the hearing of and action on such petition. This court, in its opinion filed November 19, 1945, reversed, upon the authority of Kann v. United States,

323 U. S. 88, the judgment and sentence, and directed that the case be dismissed. Accordingly, the appellant, Paul Davis Sheridan, should not be held in further custody pending disposition of the Government's petition for rehearing, or its petition to the Supreme Court for certiorari, should any such petition be hereinafter filed.

47 In the United States Circuit Court of Appeals
for the Sixth Circuit

[Title omitted.]

Petition for rehearing

Filed Dec. 29, 1945

Comes now the United States, by its attorneys, and respectfully prays that the judgment entered in this case on November 19, 1945, be vacated and that a rehearing be granted. On November 19, 1945, this Court rendered its opinion reversing the conviction of the appellant. Subsequently, the Government filed a petition for extension of time in which to file a Petition for Rehearing. This Petition was granted, extending the time to file a Petition for Rehearing to December 31, 1945, upon the express condition that the appellant was to be released from custody pending the hearing of and action on such Petition. The appellant has been released in compliance with the conditions expressed by this Court in its Order of December 3, 1945. The release of the appellant from the Federal Correctional Institution at Milan, Michigan, was effected on the 14th day of December 1945.

The first Count of the indictment in this case charges, in substance, that the appellant on the nineteenth day of July
48 A. D. 1943, at the City of Jackson, unlawfully transport and/or cause to be transported in Interstate Commerce from the City of Jackson, Michigan, to the City of Cape Girardeau, Missouri, a certain falsely made, forged, and counterfeited security, to wit: a check in the amount of $62.50, payable to P. H. D. Sheridan and purporting to have been signed as maker U. S. E. F. C., 14 A, A. J. Davis, Commissioner, the said check being drawn on the First National Bank, Cape Girardeau, Missouri, said appellant knowing the same to have been falsely made, forged, and counterfeited.

The second Count charges, in substance, that the appellant did on the 19th day of July 1943, at the City of Jackson, Michigan, unlawfully transport and/or cause to be transported in Interstate Commerce from the City of Jackson, Michigan, to the City of Cape Girardeau, Missouri, falsely made, forged, and counterfeited

security, to wit: a check in the amount of $62.50, dated July 15, 1943, drawn on the First National Bank, Cape Girardeau, Missouri, payable to P. H. D. Sheridan and purporting to be signed as maker by U. S. E. F. C. 14 A, A. J. Davis, Commissioner, the said appellant knowing same to be falsely made, forged, or counterfeited.

The third Count charges, in substance, that appellant did on the 19th day of July 1943, at the City of Jackson, Michigan, unlawfully transport and/or cause to be transported in interstate commerce from the City of Jackson, Michigan, to the City of Boston, Massachusetts, a certain falsely made, forged, and counterfeited security, to wit: a check in the amount of $50.00, dated July 18, 1943, drawn on the First National Bank of Boston, Massachusetts, payable to "Cash" and signed as maker by P. H. D. Sheridan, the said appellant knowing same to be falsely made, forged, or counterfeited. All three of these counts charge violations described in Title 18, U. S. C., Section 415, which reads in part and pertaining to the three violations of appellant:

"Whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited, shall be punished by a fine of not more than $10,000.00 or by imprisonment for not more than 10 years, or both."

49 It is strongly urged again that the rule of law laid down by the Supreme Court in Kann vs. United States, 323 U. S. 88, has no application to the facts in the instant case. It is submitted that the Kann decision merely reiterated existing law to the effect that the gist of the offense prescribed by Title 18, U. S. C., Section 338, is the use of the mails in the furtherance or accomplishment of a scheme to defraud. The Supreme Court, conceding as to the second count in the indictment, that the defendant may have caused the mailing of the check, found that the defendant's check reached fruition and was consummated when the check was cashed and hence not a living, subsisting thing when the mailing occur'ed, nor was the subsequent introduction of the check into the mail by the acceptor a contributing factor to the furtherance or accomplishment of the defendant's check. The reversal of the conviction was predicated solely upon the absence or lack of a scheme to defraud at the time of the mailing, the Court rejecting the Government's argument that the incident was a part of a continuing scheme to defraud. The Court suggested, however, that this latter situation in some circumstances would be sufficient to sustain a prosecution.

It becomes axiomatic, therefore, that to constitute a violation under Section 338, the use of the mail and a scheme to defraud

thereby must be coexistent and are for all purposes indivisible.

The appellee emphatically urges to this Court that Section 415, for the violation of which the appellant was convicted, has no such requirement by design or implication. The application of the rule expressed in the Kann case was rejected by the Honorable Judge Underwood in the case of Tolle v. Sanford, decided January 25, 1945, and reported in 58 Fed. Supp. 695. In that case the indictment charged the defendant with violations of Section 415, Title 18, U. S. C. The facts in that case were substantially the same as those in the instant case. Judge Underwood emphasized the difference that existed between the mail fraud statute, Title 18, U. S. C. S., Sec. 338, which is involved in the Kann case, and Title 18, U. S. C. A., Section 415, which is involved in the instant case. He expressed the difference very clearly on page 696 where he stated:

50 "It will be seen, therefore, that the latter statute does not provide, as does the mail fraud statute, that the use of the mails shall be an integral part of the execution of the fraud, but merely provides that whoever with fraudulent intent causes the forged securities to be transported in interstate commerce, commits a Federal offense. The fact that the transportation took place after the petitioner had secured the fruits of his forgery is immaterial; since the interstate transportation of the contraband securities is the gist of the offense. The fact that petitioner forged and passed a check in one state upon a drawee bank in another made it, as he must have known and intended, absolutely necessary that the check be transmitted in interstate commerce, so, that fraudulent intent sufficiently appears."

Presumably the Congress of the United States in its wisdom and judgment had in mind the practice of persons engaged in the use of fraudulent checks and by Section 415, aimed to place an absolute prohibition on the traffic in interstate commerce of checks of the character involved in the case at bar. The gist of the offense is the movement of such securities in interstate commerce and under well settled principles of law one who causes events to occur prohibited under the statute is liable and accountable for initiating such chain of events. The Courts have repeatedly held that an offender must be held to have intended the necessary and direct consequences of his act, and cannot be heard to say the contrary. In other words, by committing an act which necessarily and directly produces the result which the statute is designed to prevent, he is in legal contemplation, chargeable with intending that result. See Williams v. United States, 295 Fed. 302, cert. den. 265 U. S. 591, United States v. Anderson, 101 F. (2d), cert. den. 307 U. S. 625, and also United States v. Giles, 300 U. S. 41.

It therefore follows that whoever utters a spurious and fraudulent check which in the natural course of events moves in interstate commerce is chargeable with the offense contemplated by Section 415.

We therefore respectfully urge that a rehearing in this case be granted.

JOHN C. LEHR,
United States Attorney
Eastern District of Michigan.
VINCENT FORDELL,
Assistant U. S. Attorney.
FRANCIS X. NORRIS,
Assistant U. S. Attorney.

51 Dated: December 28, 1945.

I certify that this Petition is presented in good faith and not for delay.

JOHN C. LEHR,
United States Attorney,
Eastern District of Michigan.

52 In United States Circuit Court of Appeals

Order denying rehearing

Filed January 28, 1946

The petition for rehearing is denied.

53 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1946

Supreme Court of the United States

Order allowing certiorari

Filed May 13, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

FILE COPY

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MAR 5 1946
CHARLES ELMORE CROPLEY
CLERK

No. 914 53

In the Supreme Court of the United States

OCTOBER TERM, 1945

UNITED STATES OF AMERICA, PETITIONER

v.

PAUL DAVIS SHERIDAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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687336—46

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 914

UNITED STATES OF AMERICA, PETITIONER

v.

PAUL DAVIS SHERIDAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit, entered November 19, 1945, reversing respondent's conviction for violations of Section 3 of the National Stolen Property Act.

OPINION BELOW

The opinion of the circuit court of appeals is reported at 152 F. 2d 57.

JURISDICTION

The judgment of the circuit court of appeals was entered November 19, 1945 (R. 21), and a petition for rehearing was denied January 28,

1946 (R. 29). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether a person who fraudulently cashes in one state a forged check drawn on a bank in another state, has, with "unlawful or fraudulent intent", "caused" a falsely made or forged security to be transported in interstate commerce within the meaning of Section 3 of the National Stolen Property Act.

STATUTE INVOLVED

The National Stolen Property Act of May 22, 1934, c. 333, 48 Stat. 794–795, as amended, 18 U. S. C. 413–419, provides in pertinent part:

> SEC. 2. That when used in this Act—
>
> (a) The term "interstate or foreign commerce" shall mean transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.
>
> (b) The term "securities" shall include any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable

bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise; or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing.

* * * * *

SEC. 3. Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of $5,000 or more theretofore stolen, *feloniously converted,* or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, *feloniously converted,* or taken, *or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited se-*

curities, knowing the same to have been falsely made, forged, altered, or counterfeited, or whoever with unlawful or fraudulent intent shall transport, or cause to be transported in interstate or foreign commerce, any bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both: * * *.[1]

STATEMENT

Respondent was convicted in the United States District Court for the Eastern District of Michigan on all counts of a three-count indictment charging violations of Section 3 of the National Stolen Property Act (R. 2–4), and he was sentenced to imprisonment for five years on each count, the sentences to run concurrently (R. 7–8). Each count charged that respondent, with fraudulent intent, caused a falsely made or forged check to be transported in interstate commerce (R. 2–4).

The evidence shows that on July 19, 1943, respondent negotiated three bad checks. He had registered on July 18, 1943, at the Otsego Hotel

[1] The parts in italics were added by the amendment of August 3, 1939, c. 413, 53 Stat. 1178.

in Jackson, Michigan, and, when checking out the next morning, presented a check for $50.00, dated July 18, 1943, drawn on the First National Bank of Boston, Massachusetts, payable to cash, signed as maker by P. H. D. Sheridan, and bearing endorsement in the same name (count 3; R. 17–18). He received back $46.50 in cash over and above his bill (R. 18). The same day, July 19, 1943, respondent purchased articles at a jewelry store in Jackson giving a check for $62.50, dated July 15, 1943, drawn on the First National Bank of Cape Girardeau, Missouri, payable to P. H. D. Sheridan, and purporting to be signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner" (count 1; R. 18). In this transaction, respondent obtained the articles and $26.50 in change (R. 18). On the same day he cashed another identically drawn check for $62.50 at the National Bank of Jackson (count 2; R. 18–19).

These checks were forwarded to the drawee banks in Massachusetts and Missouri, respectively, and were later returned unpaid and marked "no account" (R. 18–19). Investigation proved that there was no such agency or organization as "U. S. E. F. C. 14A" nor any such person as "A. J. Davis, Commissioner" listed with the United States Department of Commerce (R. 19).

Upon appeal to the United States Circuit Court of Appeals for the Sixth Circuit, the conviction

was reversed. It was the view of the court that the decision of this Court in *Kann* v. *United States,* 323 U. S. 88, reversing a conviction under the Mail Fraud Statute (§ 215 of the Criminal Code, 18 U. S. C. 338), was controlling; that, as under the latter statute, the use of the mails or other means of interstate commerce must, under the National Stolen Property Act, be for the purpose of executing a fraudulent scheme; and that respondent could not be said to have caused the checks to be transported in interstate commerce in furtherance of his fraud. Accordingly, the court held that the cashing of a forged check drawn on an out-of-state bank to which it is subsequently forwarded for payment, is not an offense under the National Stolen Property Act.

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that the cashing of a forged check drawn on an out of state bank to which it is forwarded for payment does not constitute a violation of the National Stolen Property Act.

2. In reversing the judgment of conviction.[2]

[2] No error will be urged as to count three which involved a check signed by respondent in his own name as maker. It is unnecessary to sustain the judgment of conviction on that count, since the sentence thereon runs concurrently with the sentences on the other two counts involving checks signed with a fictitious name.

REASONS FOR GRANTING THE WRIT

The National Stolen Property Act punishes anyone who "with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged * * * securities." The questions here are whether the respondent caused the forged checks to be transported in interstate commerce and whether he acted with "unlawful or fraudulent intent". The court below did not find that respondent's conduct did not come within the normal meaning of the words of the statute. Its decision was that the facts of the case were substantially indistinguishable from those of *Kann* v. *United States*, 323 U. S. 88, a case arising under the Mail Fraud statute (18 U. S. C. 338). We believe both that the facts of the *Kann* case are distinguishable and that the Stolen Property Act has broader application than the Mail Fraud statute. Accordingly, we do not think that the *Kann* case requires that the Stolen Property Act be given other than its normal meaning. Inasmuch as there are a great many cases of this type, the problem is a recurring one and it is important that it be known whether activities of the sort here involved violate the Stolen Property Act.

No other circuit court of appeals has yet considered whether the National Stolen Property Act applies to the cashing of a forged check drawn

on an out-of-state bank to which it is subsequently forwarded by mail for payment. However, a district court has considered the question and come to a conclusion contrary to that reached by the court below. *Tolle* v. *Sanford, Warden,* 58 F. Supp. 695 (N. D. Ga.).[1] In *Barnett* v. *Hunter,* 138 F. 2d 448 (C. C. A. 10), the Act was held applicable although the issue discussed later in the *Kann* case was not raised.

1. At the outset it must be noted that no light is thrown upon the questions involved by the immediate legislative history of the amendment of 1939, which added the clause in question here (*supra,* pp. 3–4). However, the original Act was a part of the Government's legislative program of the early 1930's designed to aid state criminal law enforcement by closing the channels of inter-

[1] The court there said (p. 696):

"It will be seen, therefore, that the latter statute [National Stolen Property Act] does not provide, as does the mail fraud statute, that the use of the mails shall be an integral part of the execution of the fraud, but merely provides that whoever with fraudulent intent causes the forged securities to be transported in interstate commerce, commits a Federal offense. The fact that the transportation took place after the petitioner had secured the fruits of his forgery is immaterial, since the interstate transportation of the contraband securities is the gist of the offense. The fact that petitioner forged and passed a check in one state upon a drawee bank in another made it, as he must have known and intended, absolutely necessary that the check be transmitted in interstate commerce, so that fraudulent intent sufficiently appears."

state commerce to traffic of criminals or criminal activities. In this the Act is totally distinct from the Mail Fraud Statute, which was designed primarily to protect a federal instrumentality, the United States mails.

The statutes are thus not in *pari materia*. The Mail Fraud Statute, as pointed out by this Court in the *Kann* case, applies only to fraudulent schemes in which the use of the mails is a part of the execution of the fraud (323 U. S. at 95); the mails must be used "for the purpose of executing such scheme or artifice" (Criminal Code, § 215). On the other hand, the National Stolen Property Act excludes from interstate commerce already bad or adulterated items and does not require that the process of adulteration or fraud coexist with the use of interstate commerce. In this respect the Act might be said to be comparable to the Federal Food, Drug, and Cosmetic Act of 1938. 21 U. S. C. 301 ff. The Act, as a matter of fact, has its principal application to such things as interstate transportation of stolen goods where certainly the basic criminal aspects have reached fruition before the interstate movement. Compare the National Motor Vehicle Theft Act, 18 U. S. C. 408.

It is true that under the Act the transportation or causing the transportation of a forged, etc., security must be "with unlawful or fraudulent

intent," but this does not, as under the Mail Fraud Statute, necessarily require coexistence of such intent with the transportation. Where, as in the instant case, a defendant has a fraudulent state of mind at the time he sets in motion the series of events causing the transportation in interstate commerce, he commits an offense within the terms of the statute.

The court below concluded that it would be as illogical to find that respondent had caused the checks to be transported in interstate commerce as to find such in the *Kann* case. It must be noted that this Court came to no conclusion on causation in that case and in point of fact considered it a fair inference that the defendants believed the checks would, in accordance with normal business practices, be cleared through the mails (323 U. S. at 93). The same can be concluded as to respondent here. Moreover, there is an essential difference between the situation here and that in the *Kann* case not recognized by the court below. In that case the cashing of the checks was in nowise essential to the fraud, nor, considered separately, was it fraudulent in and of itself, since the scheme could just as well have been effected by cash payments between the conspirators; and the checks were valid instruments which the drawee bank was required to honor. In the instant case, however, the checks were invalid instruments, and their presentation for payment, which commenced the chain of events leading to transportation in

interstate commerce, was patently fraudulent. And it is obvious that respondent could not have succeeded by a direct claim on the drawee bank, but could only have effectuated the fraud by cashing the checks at a foreign bank which would then be required to clear them through the mails or other channels of interstate commerce. It is true that respondent had the fruits of his fraud before the use of the interstate mails commenced, but, in contradistinction to the situation of the *Kann* case, the fraud in its essentials could only have been perpetrated by a device, the ultimate and probable consequence of which was transportation in interstate commerce. Under such circumstances, respondent must be said to have caused the use of the mails. *Shea* v. *United States*, 251 Fed. 440 (C. C. A. 6); *Williams* v. *United States*, 295 Fed. 302, 304–5 (C. C. A. 5), certiorari denied, 265 U. S. 591. To conclude otherwise would limit causation to the narrow group of situations where the party charged with responsibility exercises upon the doer an inexorable compulsion from which there is no escape.

It is urged, therefore, that respondent, having had an unlawful and fraudulent intent with respect to the checks at the time he cashed them and thereby set in motion a chain of events which he must have realized would lead to the use of interstate mails, committed an offense within the terms of the Act.

2. The question involved is one of the substantial importance to the Department of Justice in its efforts to aid the states in criminal law enforcement and in the administration of this Act. Persons who traffic in bad checks are normally and desirably treated by state justice. But in many cases the activities and travels of such criminals are so widespread and repetitive that action by the states is difficult, if not impossible. Recognizing this fact, it has been the policy of the Department to prosecute cases such as the instant one, and a substantial number of similar convictions have been obtained, with the result that numerous persons are now serving sentences for such activities.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. HOWARD MCGRATH,
Solicitor General.

MARCH 1946.

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No. 53

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES OF AMERICA, PETITIONER

v.

PAUL DAVIS SHERIDAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the circuit court of appeals (R. 21–25) is reported at 152 F. (2d) 57.

JURISDICTION

The judgment of the circuit court of appeals was entered November 19, 1945 (R. 21), and a petition for rehearing was denied January 28, 1946 (R. 26–29). The petition for a writ of certiorari was filed March 5, 1946, and granted May 13, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial

Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether a person who fraudulently cashes in one state a forged check drawn on a bank in another state, the check thereafter being transmitted to the drawee bank for payment, has, with "fraudulent intent," "caused" a falsely made or forged security to be transported in interstate commerce within the meaning of Section 3 of the National Stolen Property Act.

STATUTE INVOLVED

The National Stolen Property Act of May 22, 1934, 48 Stat. 794, 795, as amended by the Act of August 3, 1939, 53 Stat. 1178 (18 U. S. C. 413–419), provides in pertinent part as follows:

> SEC. 2. That when used in this Act—
>
> (a) The term "interstate or foreign commerce" shall mean transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.
>
> (b) The term "securities" shall include any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negoti-

able bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise; or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing.

* * * * *

SEC. 3. Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of $5,000 or more theretofore stolen, *feloniously converted,* or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, *feloniously converted,* or taken, *or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counter-*

feited securities, knowing the same to have been falsely made, forged, altered, or counterfeited, or whoever with unlawful or fraudulent intent shall transport, or cause to be transported in interstate or foreign commerce, any bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both: *Provided, That the provisions of this section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of (1) an "obligation or other security of the United States" as defined in section 147 of the Criminal Code (U. S. C., title 18, sec. 261) or (2) an obligation, bond, certificate, security, Treasury note, bill, promise to pay, or bank note, issued by any "foreign government" as defined in the Act of June 15, 1917, title VIII, section 4 (U. S. C., title 18, sec. 288), or by a bank or corporation of any foreign country.*[1]

STATEMENT

After a trial by jury, the respondent was convicted in the United States District Court for the Eastern District of Michigan on each count of a three-count indictment charging violations of

[1] The parts in italics were added by the amendment of August 3, 1939, *supra*.

Section 3 of the National Stolen Property Act, as amended (R. 2–4; 6; *supra*, pp. 3–4).[2] He was sentenced to imprisonment for five years on each count, the sentences to run concurrently (R. 7–8). Each count of the indictment charged that the respondent, with fraudulent intent, caused a falsely made or forged check to be transported in interstate commerce (R. 2–4).

The evidence adduced by the Government[3] shows that the respondent negotiated three checks on July 19, 1943, on the basis of which he was indicted in the present case. On July 18, 1943, the respondent had registered at the Otsego Hotel in Jackson, Michigan. He checked out of the hotel the next day, giving the hotel clerk a check for $50.00, dated July 18, 1943, drawn on the First National Bank of Boston, Massachusetts. The check was payable to "Cash" and was signed as maker by "P. H. D. Sheridan". It was endorsed "P. H. D. Sheridan, 230 Park Avenue, New York." (R. 17–18, 22; count 3.) The clerk deducted $3.50 for the hotel bill and gave the respondent $46.50 in cash (R. 18). The same day, July 19, 1943, the respondent bought some luggage at a store in Jackson. He gave the manager of the store a check for $62.50, dated July 15, 1943, drawn on the First National Bank of Cape Girar-

[2] Respondent waived the right to the assistance of counsel at the trial (R. 1, 6, 7).

[3] Respondent did not offer any evidence (R. 20).

deau, Missouri. This check was payable to "P. H. D. Sheridan", and purported to be signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner" (R. 18; count 1). The manager deducted $36.00, the price of the luggage, and gave the respondent the balance of $26.50 (R. 18). On the same day the respondent went to the National Bank of Jackson, where he cashed another identically drawn check for $62.50 (R. 18–19; count 2).

The checks were forwarded from Jackson, Michigan, to the drawee banks in Massachusetts and Missouri, respectively. The banks returned them unpaid and marked "no account" (R. 18–19). Investigation by the Federal Bureau of Investigation established that there was no such agency as "U. S. E. F. C. 14A", and no such person as "A. J. Davis, Commissioner" listed with the United States Department of Commerce (R. 19).

Upon appeal to the Circuit Court of Appeals for the Sixth Circuit, the respondent's conviction was reversed (R. 21–25). It was the view of that court that the case was controlled by the decision of this Court in *Kann* v. *United States*, 323 U. S. 88, wherein a conviction under the mail fraud statute (section 215 of the Criminal Code; 18 U. S. C. 338)[4] was reversed, this Court hold-

[4] Section 215 provides in pertinent part that "whoever, having devised or intending to devise any scheme or artifice to defraud, * * * shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be

ing that the participants in the fraudulent scheme having obtained the fruits of their fraud when they cashed certain checks at their banks, the subsequent mailing of the checks by the banks, which were holders in due course, to the drawees were not mailings for the purpose of executing the fraudulent scheme. The court below held, in effect, that as under the mail fraud statute the use of the mails must be in furtherance of the fraudulent scheme, so under the particular amendatory provision of Section 3 of the National Stolen Property Act, the use of the means of interstate commerce must be for the purpose of furthering the fraud, and that since the respondent's fraudulent scheme had been fully consummated when he cashed the checks, it could not be said that he caused their subsequent interstate transportation in furtherance of his fraudulent scheme.

SPECIFICATIONS OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that the cashing of a forged check drawn on an out-of-state bank to which it is forwarded for payment does not constitute a violation of the National Stolen Property Act.

2. In reversing the judgment of conviction.

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placed, any letter, * * * in any post office, * * * of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, * * * shall be fined not more than $1,000, or imprisoned not more than five years, or both."

SUMMARY OF ARGUMENT

The National Stolen Property Act is a part of a body of legislation designed to complement state criminal law enforcement by excluding from interstate commerce traffic which has an illegal character under state law. The mail fraud statute is designed to prevent the mails from being used in the execution of fraudulent schemes, without regard to the character of the matter placed in the mails. The two statutes are so dissimilar in terms and purpose as to make the doctrine of the *Kann* case inapplicable.

The checks involved are within the statute; their interstate transportation was caused by the respondent; and under the proper construction of the statute he had the requisite fraudulent intent.

A. The checks negotiated by the respondent were drawn in the name of a fictitious person. They were, therefore, falsely made securities within Section 3 of the National Stolen Property Act, the term security being defined by Section 2 of that Act to include checks.

B. The word "cause" is used in Section 3 of the National Stolen Property Act in its ordinary sense; i. e., to bring about. The respondent by negotiating the falsely made checks which were drawn on an out-of-state bank, caused those checks to be transported in interstate commerce. The sending of the checks to the out-of-state bank on which they were drawn was the necessary and

direct result of the respondent's negotiation of them and under these circumstances he cannot be heard to say the contrary.

C. The respondent had the fraudulent intent required by the statute.

(1) Read literally, the amendatory language of Section 3 of the National Stolen Property Act requires no more than that the offender have a fraudulent intent at the time he does the act which causes the interstate transportation of a spurious security. To so read the amendment makes it comport with the familiar rule of criminal law that a person who intentionally does an act is conclusively presumed to intend the necessary and direct consequences of his act.

(2) Assuming *arguendo,* that the spurious securities provision requires that the "fraudulent intent" specified therein exist when the securities are transported, and that it must be directed against the particular person with whom the offender deals, the respondent's fraudulent intent against those with whom he dealt had not terminated when the interstate transportation of the checks took place.

The respondent's fraudulent intent obviously encompassed more than the mere intent to receive the proceeds of the checks. He intended, in addition, to retain the proceeds permanently, and to aid him in effectuating that vital part of his plan, he used checks drawn on a bank a long dis-

tance away. When he cashed the checks he knew and intended that the time which would necessarily elapse while the checks would be in the course of transmission for payment, would aid him in his plan to escape and thus materially assist him in his effort to retain the proceeds of the checks permanently. Hence, it is difficult to perceive how the mere receipt of the proceeds of the checks could have exhausted the respondent's fraudulent intent.

(3) The statute excludes from interstate commerce securities that have acquired an illegal character because of their involvement in violations of state laws. The purpose of placing the term "fraudulent intent" therein must have been to exclude from interstate commerce all securities of that character. With this purpose in mind, the Congress, no doubt, had in contemplation the rule that a person who negotiates a spurious security has a general intention, sufficient under state law, to defraud any innocent member of the public who takes it for value. In the absence of language in the statute showing a contrary intention, it is reasonable to assume that the Congress used the term "fraudulent intent" with that rule in mind, and that it did not, therefore, intend that one who causes the interstate transportation of a spurious security should be permitted to immunize himself from the punishment provided in the Act by showing that prior

to the transportation he had received the proceeds of the security from a particular person.

ARGUMENT

Introduction

Section 3 of the National Stolen Property Act as it was originally enacted in 1934 (*supra,* p. 3) made it an offense for any person to transport or cause to be transported in interstate or foreign commerce any property (including securities) of the value of $5,000 or more which had theretofore been stolen, or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, etc. In 1939 the Congress amended Section 3 of the Act (*supra,* pp. 3–4), by adding thereto, *inter alia,* a provision which enlarged the scope of the Act to make it an offense for anyone "with unlawful or fraudulent intent [to] transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited."[5] This case arises under that amendment.

[5] The amendment excepts from its operation securities of the United States Government and certain foreign securities. With the same exception, it was also made an offense to transport or cause to be transported in interstate or foreign commerce various specified implements used in forging or counterfeiting securities. In addition, the amendment provided that it should be an offense to transport or cause to be transported in interstate or foreign commerce property of the

The immediate legislative history of the amendment sheds little light on its intended reach. It was suggested by the Attorney General, approved by the judiciary committees of both houses of Congress, and enacted without extended discussion. The only statements in the committee reports or in the limited floor discussion of the amendment were to the effect that it was intended to cover the counterfeiting of securities. See H. Rep. 422 and S. Rep. 674, 76th Cong., 1st sess.; see also 84 Cong. Rec. 9411–9412. However, while this objective may have motivated the legislation, it is obvious from the express terms of the amendment, which include not only "counterfeited", but also "falsely made, forged", and "altered" securities, that the amendment was intended to and does cover more than the transportation of counterfeited securities.[6]

The original Act of 1934 was modeled on the provisions of the National Motor Vehicle Theft Act of October 29, 1919, c. 89, 41 Stat. 324 (18 U. S. C. 408), which made it an offense to transport or cause to be transported in interstate or foreign commerce a stolen motor vehicle with knowledge that it had been stolen.[7] The latter

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value of $5,000 or more which had been feloniously converted, knowing the same to have been so converted.

[6] The term "securities" is defined by Section 2 of the Act (*supra*, p. 2) to include any "check."

[7] The National Stolen Property Act is entitled "An Act to extend the provisions of the National Motor Vehicle Theft Act to other stolen property." See 48 Stat. 794.

act was part of a body of federal legislation extending over a period of half a century, in which the Congress, exercising its power to regulate commerce, had forbidden, under pain of punishment, the use of interstate commerce as an agency to promote crime or immorality in any of the states, or to spread other evils, such as disease or adulterated foods, to the people of other states from the state of origin. See *Brooks* v. *United States*, 267 U. S. 432.[8] The National Motor Vehicle Theft Act marked the beginning of that phase of the congressional program induced by the alarming facility with which a stolen automobile could be removed from the jurisdiction of the police authorities in which it had been stolen, by merely driving it across a state line. *Brooks* v. *United States, supra*, at pp. 438–439. The increasingly common use of the automobile led to

[8] The *Brooks* case held that the National Motor Vehicle Theft Act was a valid exercise of the commerce power. The opinion refers to decisions of this Court upholding the following earlier statutes as within the commerce power: The Animal Industry Act of May 29, 1884, c. 60, 23 Stat. 31, sec. 6 (21 U. S. C. 115), excluding diseased cattle from interstate commerce; the Act of March 2, 1895, c. 191, 28 Stat. 963, for the suppression of lottery traffic; the Pure Food and Drug Act of June 30, 1906, c. 3915, 34 Stat. 768, excluding adulterated articles from interstate commerce; the White Slave Traffic Act of June 25, 1910, c. 395, 36 Stat. 825 (18 U. S. C. 397–404), prohibiting the interstate transportation of women for immoral purposes; and the Webb-Kenyon Act of March 1, 1913, c. 90, 37 Stat. 699 (27 U. S. C. 122), forbidding the transportation into a State of liquor intended for personal use contrary to state law.

its frequent employment by those who had violated state criminal laws for the purpose of crossing state lines in order to evade detection and apprehension. It is well known that during the 1920's and 1930's bank robbers, highwaymen, and other criminals found it easy after the commission of an offense in one state to escape from the jurisdiction of the state police where the offense had been committed through the simple expedient of traveling by automobile to another state, taking with them their illegally acquired gains and their firearms. Kidnapers likewise found it a simple matter to escape from the state police by similarly transporting their victims across state lines. In these circumstances, the several states were unable to enforce their criminal laws effectively, and in order to aid them it became necessary for the federal government to outlaw this traffic in interstate commerce. The Congress, therefore, as in the case of the National Motor Vehicle Theft Act, enacted a series of statutes founded on its power to regulate commerce designed to exclude such traffic from the channels of interstate commerce. See Chamberlain, *Federal Criminal Statutes, 1934*, 20 A. B. A. Journal 501 (1934); Miller, *The Attorney General's Program for Crime Control*, 21 *id.* 507 (1935); see also 21 Va. L. Rev. 568 (1935); and 48 Harv. L. Rev. 489 (1935). Among these statutes were the Federal Kidnaping Act of June 22,

1932, c. 271, 47 Stat. 326 (18 U. S. C. 408a), making it an offense to transport a kidnaped person across state lines;[9] the Fugitive Felon Act of May 18, 1934, c. 302, 48 Stat. 782 (18 U. S. C. 408e), making it unlawful for any person to travel in interstate or foreign commerce with intent to avoid prosecution for specified crimes of violence under the laws of the place from which he fled; and the National Stolen Property Act of 1934. It is plain that the purpose of these statutes was to complement state law enforcement through the exclusion from interstate commerce of traffic which had acquired the taint of illegality because connected with a violation of some state criminal law. The gist of the offense under the National Stolen Property Act of 1934, as in the case of its precursor, the National Motor Vehicle Theft Act, is the transportation of an article which under local law has already been vested with an unlawful character.

The 1939 amendment to the National Stolen Property Act extended the provisions of that Act to include falsely made, forged, altered, and counterfeited securities, other than certain foreign securities or those of the federal government (see *supra*, pp. 3–4). Obviously, such securities, unlike those which are genuine, have no

[9] In *Chatwin* v. *United States*, 326 U. S. 455, 462–463, reference is made to the fact that the Federal Kidnaping Act was enacted to assist the States in stamping out kidnapings.

value as such. They have no legitimate use in normal commercial intercourse, and they can be disposed of for their ostensible value by one having knowledge of their falsity only through the fraudulent representation that they are genuine. Thus, their disposition under these circumstances is universally forbidden by state law.[10] And, it is equally clear that persons who make false securities may distribute them for utterance in states outside the state of manufacture, thereby making it difficult, if not impossible, for the authorities of the states in which they are uttered to detect their source and to apprehend their makers. It follows that the spurious securities excluded from interstate commerce by the 1939 amendment, like the stolen property specified in the original Act, are those which have been tainted with illegality through their involvement in a violation of state law. Thus, the underlying purpose of the Congress in passing the 1939 amendment was no different from its purpose in enacting the original Act. In both cases the purpose was to complement state law enforcement by prohibiting the transportation in interstate commerce of property which has acquired an illegal character. In contradistinction, the purpose of the mail

[10] *E. g.*, in Michigan, where the checks here involved were cashed, it is a felony to utter a falsely made bill of exchange (check), knowing the same to be falsely made, with intent to defraud. Penal Code, section 249, 24 Mich. Stat. Anno. § 28.446.

fraud statute, under which *Kann* v. *United States*, 323 U. S. 88, arose, is to prohibit the use of the United States mail service, an enterprise wholly owned and operated by the federal government, as an instrumentality for the perpetration of frauds; and under that statute the writings or articles placed in the mails to further the fraud need have in and of themselves no illegal status or existence. Because of these differences, it is plain that the reasoning of the *Kann* case, upon which the court below relied, has no proper place in a construction of the 1939 amendment (see *infra*, pp. 24–26, 32–33).

Respondent with fraudulent intent caused a falsely made security to be transported in interstate commerce

The acts on account of which the respondent was prosecuted in this case consisted of his cashing three checks in Jackson, Michigan, each of which was drawn on a bank in another state (see *supra*, pp. 5–6). We here show that these acts, coupled with the subsequent interstate transportation of the checks, constituted violations of the National Stolen Property Act, as amended.

A. *The checks were falsely made or forged securities within the statute.*—The checks cashed by the respondent are "securities" within the meaning of that term as used in the National Stolen Property Act. Section 2 (b) of that Act (*supra*, p. 2) defines the term "securities" and

expressly includes checks in its definition. See *Barnett* v. *Hunter*, 138 F. (2d) 448, 449 (C. C. A. 10).

The checks involved in counts one and two of the indictment (*supra*, pp. 5–6) were "falsely made" or "forged" securities.[11] Each of them was made in the name of a fictitious person payable to the order of respondent, and there was no account in the name of the maker in the bank on which they were drawn. In negotiating them the respondent represented that they were genuine (R. 18–19).[12] The natural inference under these circumstances is that it was the respondent who made the checks and that he made them with fraudulent intent. It is beyond argument, therefore, that the checks were under general law falsely made or forged. Hence, they were falsely made or forged securities under the National Stolen Property Act, as amended.

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[11] No error is urged as to the reversal in respect of count three of the indictment. That count (*supra*, p. 5) involved a check signed by the respondent in his own name as maker. It is not clear that such a check is falsely made or forged within the general law. See *Goucher* v. *State*, 113 Neb. 352, 354–355 (1925). It is unnecessary, however, to sustain the judgment of conviction on count three, since the sentence on that count was made to run concurrently with the sentences on the other counts (*supra*, p. 5). See *Hirabayashi* v. *United States*, 320 U. S. 81, 85.

[12] In one case the respondent stated that he had received the check "in the course of his business." In the other case, he had an officer of the bank identify him to the paying teller.

B. *Respondent caused the interstate transportation of the checks.*—There can be no serious contention on this record as to the sufficiency of the evidence to support the jury's finding that the checks which the respondent cashed in Jackson, Michigan, were thereafter transported in interstate commerce. A witness, well qualified in banking matters, testified that the stamped endorsements on the checks involved in counts one and two of the indictment showed that the banks in Jackson, Michigan, in which they had been deposited had forwarded them to the drawee bank in Cape Girardeau, Missouri, and that the latter had returned them unpaid marked "no account." (R. 19.)

The statute punishes not only the actual transporter but also anyone who has "caused" the transportation (*supra*, p. 3). The word "cause" is a word of very broad import, and in its well-known sense it means "bringing about". In the absence of any contrary legislative intent the word "cause" as used in the National Stolen Property Act must be given its commonly accepted meaning. Cf. *United States* v. *Kenofskey*, 243 U. S. 440, 443; *Huffman* v. *United States*, 259 Fed. 35, 38 (C. C. A. 8). It has been held under both the National Stolen Property Act and the National Motor Vehicle Theft Act[13]

[13] As our earlier discussion shows (*supra*, pp. 12–15), the National Motor Vehicle Theft Act is clearly *in pari materia* with the National Stolen Property Act.

that a person may cause an article to be transported in interstate commerce, even though he does not specifically direct such transportation. If he intentionally sets in motion a train of circumstances which have as their natural and probable consequence the interstate transportation, he will be said to have caused it. See *Backun* v. *United States,* 112 F. (2d) 635, 636–637 (C. C. A. 4); *Millette* v. *United States,* 4 F. (2d) 635 (C. C. A. 7).[14] This is no more than the application of the familiar doctrine that a person is presumed to intend the natural and probable consequence of his act. See *Bradford* v. *United States,* 129 F. (2d) 274, 277 (C. C. A. 5) certiorari denied, 317 U. S. 683; *Weiss* v. *United States,* 122 F. (2d) 675, 681 (C. C. A. 5), certiorari denied, 314 U. S. 687; *Dunlap* v. *United States,* 70 F. (2d) 35, 37 (C. C. A. 7), certiorari denied, 292 U. S. 653; *Greenspahn* v. *United States,* 298 Fed. 736, 738 (C. C. A. 7). If a person does an act which necessarily and directly causes a given result he will not be permitted

[14] There are also numerous decisions under the mail fraud statute wherein the word "cause" appearing in that statute has been given a like scope. *United States* v. *Kenofskey, supra; Graham* v. *United States,* 120 F. (2d) 543, 546 (C. C. A. 10); *United States* v. *Weisman,* 83 F. (2d) 470, 474 (C. C. A. 2), certiorari denied, 299 U. S. 560; *Corbett* v. *United States,* 89 F. (2d) 124 (C. C. A. 8); *Smith* v. *United States,* 61 F. (2d) 681, 684 (C. C. A. 5), certiorari denied, 288 U. S. 608; see also *Demolli* v. *United States,* 144 Fed. 363, 365–366 (C. C. A. 8).

to show that he intended the contrary. *United States* v. *Patten*, 226 U. S. 525, 543; *United States* v. *Masonite Corp.*, 316 U. S. 265, 275. Under these doctrines, it is clear, we submit, that respondent "caused" the interstate transportation of the checks. It is certain that he cashed them. And, he must have known that the banks in which the checks would be deposited, would necessarily have to forward them for payment, as they did, to the out-of-state bank on which they were drawn. Cf. *United States ex. rel. Marcus* v. *Hess*, 317 U. S. 537, 542–544.

Our discussion of causation has been necessarily limited to whether the respondent actually caused the checks to be transported in interstate commerce. Since the statute requires that whoever causes the securities to be transported must do so with fraudulent intent, we now pass to that phase of the argument.

C. *Respondent had the fraudulent intent required by the statute when he caused the checks to be transported in interstate commerce.*—The pertinent portion of Section 3 of the statute here involved provides that "whoever with * * * fraudulent intent shall * * * cause to be transported in interstate * * * commerce any falsely made [or] forged * * * securities, knowing the same to have been falsely made, [or] forged, * * * shall be punished" as therein provided (*supra*, pp. 3–4). The court below

concluded that the respondent's acts did not constitute offenses under the statute because his "fraudulent scheme" had been fully consummated before there was any interstate transportation (R. 24–25). In reaching this conclusion the court proceeded upon the theory that the reasoning of this Court in *Kann* v. *United States*, 323 U. S. 88, a case arising under the mail fraud statute (see fn. 4, p. 6, *supra*) was controlling.[15]

In the *Kann* case the defendants, who were officers or executives of a corporation, were charged with having caused the mailing of two checks in execution of a scheme to defraud the corporation of its profits. The checks represented the profits diverted to the defendants. One of the checks, payable to five of the defendants, was cashed by them at a bank which thereafter mailed it to the bank on which it was drawn; the other check, payable to one of the defendants, was deposited by him in a bank, which also mailed it to the bank on which it was drawn. This Court concluded that the mailings were not for the purpose of executing the scheme to defraud. It stated that by cashing the check in the one case, and by depositing it in

[15] To the same effect, see *United States* v. *Hopper*, 63 F. Supp. 612 (D. Ore.), and *United States* v. *Wood*, 58 F. Supp. 451 (N. D. W. Va.). Other cases, however, have held that the reasoning of the *Kann* case does not apply in construing the 1939 amendment to Section 3 of the National Stolen Property Act. See *Clarke* v. *Sanford*, 156 F. (2d) 115 (C. C. A. 5), decided May 16, 1946, and *Tolle* v. *Sanford*, 58 F. Supp. 695 (N. D. Ga.).

the other case, the defendants had "received the moneys it was intended they should receive. * * * The banks which cashed or credited the checks, being holders in due course, were entitled to collect from the drawee bank in each case and the drawer had no defense to payment. The scheme in each case had reached fruition. The persons intended to receive the money had received it irrevocably. It was immaterial to them, or to any consummation of the scheme, how the bank which paid or credited the check would collect from the drawee bank." (323 U. S. at p. 94.) The court below said that it was "no more logical to say that [respondent] caused the checks to be transported in interstate commerce than it would have been to say that the conspiring defendants in the *Kann* case caused the checks to be mailed for the purpose of executing their fraudulent scheme; inasmuch as the victims cashed the checks falsely made by [respondent] and became holders in due course, just as did the banks which cashed or credited the checks in the Kann case." (R. 25.)

The Circuit Court of Appeals for the Fifth Circuit and the District Court for the Northern District of Georgia have held that the doctrine of the *Kann* case has no application to a prosecution under the National Stolen Property Act involving the cashing of forged checks drawn on out-of-state banks, and that it is immaterial that the de-

fendant had obtained the money on the checks before the transportation took place. *Clarke* v. *Sanford*, 156 F. (2d) 115, pending on petition for a writ of certiorari, No. 397 at the present Term; *Tolle* v. *Sanford*, 58 F. Supp. 695. In those cases both courts pointed out that there is a fundamental distinction between the mail fraud statute and the National Stolen Property Act, in that the gist of the former is not the mere mailing of a letter but its mailing in furtherance of a fraudulent scheme, while the gist of the applicable provision of the latter Act is the mere transportation or causing to be transported in interstate commerce of falsely made, forged, altered, or counterfeited securities. On the basis of this difference both courts in the cases before them found it improper to follow the doctrine of the *Kann* case in construing the National Stolen Property Act, but held instead that, in view of the gist of the latter Act, it was immaterial that the offenders had received the money for the spurious securities prior to the time they were actually transported in interstate commerce, the statute not requiring the transportation to be in execution of the fraud.[16]

We submit that the National Stolen Property Act here involved and the mail fraud statute considered by this Court in the *Kann* case are so fundamentally dissimilar both in design and

[16] In the *Clarke* case, the Fifth Circuit refused to follow the instant decision; the court said "*Sheridan's* case was wrongly decided."

in purpose as to preclude their being construed in a manner which requires the limiting effects of a unique provision in one to be made common to both. The dissimilarity between the mail fraud statute and the National Stolen Property Act is strikingly plain. The mail fraud statute is designed to prevent a federally owned and operated institution; i. e., the United States mail service, from being made an active force in the perpetration of frauds upon the public. It precludes the use of the mails only when that use tends to effect the execution of a scheme to defraud. Hence, it is the advancement of the fraudulent scheme that activates the statute, and not the illegal character of the matter which is placed in the mails. The National Stolen Property Act, on the other hand, is designed to complement state criminal law enforcement by closing the channels of interstate commerce generally to articles which have acquired an illegal character under the criminal laws of the states because of their involvement in violations of those laws. Its vital force is brought into action, not by the use of interstate commerce in execution of a fraudulent scheme, but by the interstate transportation of articles of the character specified, coupled only with guilty knowledge, and in some instances fraudulent intent, on the part of the offender.

Since there are material distinctions between the mail fraud statute and the National Stolen

Property Act, the latter Act should be construed in the light of its own language and objective for the purpose of determining whether one who entertains a fraudulent intent at the time he does an act which necessarily and directly results in the interstate transportation of a specified spurious security, shall be permitted to say that he had no fraudulent intent when such transportation occurred, because prior to the transportation he had received the face value of the security. There are several possible constructions which may be reasonably placed on the spurious securities provision of Section 3 of the National Stolen Property Act. Under none of them will the provision permit an accused to escape punishment by showing that he had received the fruits of his fraud prior to the actual transportation of the security in interstate commerce.

(1) The language of Section 3 of the National Stolen Property Act, as amended to include spurious securities, read literally, requires only that an offender have a fraudulent intent at the time he "causes" the transportation of a spurious security in interstate commerce; i. e., when he does the act which brings about the interstate transportation of the security. Under a literal reading of the section, a person who, with fraudulent intent, does an act the necessary and direct result of which is the interstate transportation of a spurious security, has violated the section. So

read, the effect of the section is similar to that of the familiar rule of criminal law that a person who intentionally does an act will be conclusively presumed to intend the necessary and direct consequence of his act. See *United States* v. *Patten*, 226 U. S. 525, 543; *United States* v. *Masonite Corp.*, 316 U. S. 265, 275.

(2) Assuming *arguendo*, that the amendment requires that the fraudulent intent exist at the time of the interstate transportation, and that it must be directed against the particular person with whom the offender has dealt, it is clear that in the case at bar the respondent had the requisite fraudulent intent when the checks were actually transported in interstate commerce. There is no language in the amendment which requires that the interstate transportation shall be in execution of the fraud which the offender intends to perpetrate. At the most, the amendment requires only that the interstate transportation and the fraudulent intent shall co-exist, and it is plain that the respondent still entertained a fraudulent intent against those with whom he dealt when the checks were transported to the out-of-state bank. True, he had received the money and merchandise from them in exchange for the falsely made checks before the checks entered the channels of interstate commerce, but the payments and deliveries were subject to revocation, since he received no title to the money or property.

He could not reasonably consider the transactions as closed, for he knew that what he had obtained would be subject to recapture by the rightful owners as soon as the fraud would be discovered, and he knew and intended that the delay caused by sending the checks to the distant bank would preclude the rightful owners from seeking immediate recapture, thus giving him an opportunity to make plans for retaining indefinitely the money and merchandise. Since his permanent retention of the money and merchandise was a vital part of his fraudulent plan, it is difficult to perceive how his fraudulent intent could have been terminated prior to the occurrence of the interstate transportation, the necessary time for which he counted upon to aid him in preventing the true owners from making him disgorge.

(3) The probable reasons underlying the inclusion in the amendment of the fraudulent intent requirement clearly indicate that the measure of the fraudulent intent which the Congress envisaged is such that it is not limited in its direction to the immediate person from whom the offender collects, and is not, therefore, consummated when the offender receives payment for a spurious security prior to its interstate transportation.

In amending Section 3 of the Act to make it include spurious securities, the Congress was again complementing state law enforcement. It was,

therefore, necessary to devise language broadly descriptive of securities which are of an illegal character under state law. The Congress was aware, no doubt, that a requirement merely of knowledge by an offender of the false character of a security might not comprehend the element of fraudulent intent which under state law is required in order to give to the security a contraband character in the offender's hands. The purpose of the Congress in placing in the amendment the requirement that an offender have a fraudulent intent must have been, therefore, to make it certain that all of the new types of property which it was incorporating into the statute should, before their interstate transportation would be punishable, have an illegal character similar to that of the stolen property excluded by the original Act. Bearing in mind this congressional purpose for placing in the amendment the term "fraudulent intent" and the fact that the amendment does not expressly provide that the interstate transportation must be in furtherance of a scheme to defraud a particular person, we think it is reasonable to assume that the Congress had in contemplation the general fraudulent intent which is sufficient under state law; that is, a person who makes and negotiates a spurious security need have only a general intention to defraud any innocent member of the public who may take it for value. We believe therefore that this

was the breadth of the "fraudulent intent" which the Congress had in mind when it included that term in the amendment. See *Pines* v. *United States*, 123 F. (2d) 825, 827 (C. C. A. 8).

With this broad connotation of the term "fraudulent intent" in mind, the Congress would scarcely have placed that term in the amendment unattended by clarifying language had it intended to use the term in a narrower sense. In other words, the Congress would not in all reasonable probability, have left its purpose unexpressed had it intended to use the term as the basis of a highly restrictive rule that the interstate transportation of spurious securities should be within the operation of the statute only when the transportation is coupled with a fraudulent intent on the part of the offender to practice a specific deceit on a particular person, or when the transportation would be a step in the execution of a particular fraudulent scheme. In the absence of express language in the statute evidencing an intention on the part of the Congress to use the term in the narrower sense, it would be improper to imply that it did so. The stolen property provisions of Section 3 do not permit a person who, by the sale of stolen property knowing that it is to be taken to another state, and thus causes it to be transported interstate, to use his ill-gotten gains as a shield to evade punishment for his

criminal responsibility for the transportation. See *Backun* v. *United States*, 112 F. (2d) 635, 637 (C. C. A. 4). Why then, should the Congress have intended to extend to an offender under the spurious securities provision of the same section that unusual privilege? No cogent reason is apparent why the Congress should have granted the privilege to one class of offenders under the section while withholding it from others, especially since the spurious securities which the Congress was including in the section were as objectionable in character as the stolen property originally included.

A simple illustration will dispel any doubt that the Congress intended to use the term "fraudulent intent" in a sense so narrow and particular as to permit an offender to escape punishment by showing that he has received the fruits of his fraud. Let us suppose that A makes a spurious security in Michigan which he sells for less than its face value to B in New York with the intention that B, who has knowledge of its false character, will utter it in the latter state at its face value. B sends the money for the security to A and A then hires C to transport the security to B in New York. In such case A has reaped the full fruits of his fraud prior to the interstate transportation, but it is patent that the receipt of the money from B could not affect the general

fraudulent intent entertained by him when he made the false security, for he never intended to defraud B. However, it is clear that A when he made the security had the fraudulent intent requisite to complete the state crime involved in the making of it and to give to the security a contraband character in his hands when he caused its interstate movement. It is difficult to comprehend that the Congress did not intend the amendment to cover a case such as that, but the construction applied to that provision by the court below in the case at bar would clearly exclude it from the operation of the statute, since A has received all that he ever expects to receive for the security prior to the interstate transportation. We submit that the Congress did not intend that result, and that it did not, *a priori*, intend that the receipt by an offender of the fruits of his fraud in connection with a spurious security, should immunize him from prosecution under the statute. Cf. *U. S. ex rel. Marcus* v. *Hess*, 317 U. S. 537, 542–543.

Under the circumstances the court below was in error in reversing the conviction of the respondent on the basis of this Court's decision in *Kann v. United States, supra.* In that case the statute considered by this Court required that the

use of the mails be in execution of the fraudulent scheme, and the checks involved were valid. When the banks took the checks they became holders in due course, and the payments made by them on the checks were irrevocable. The checks were not the basis of the fraud, and the perpetrators of the fraud might have secured payment in another form, so that the mailing of the checks was merely incidental to the fraud and not in execution of it. Here, the statute does not require that the transportation be in execution of the fraud, but at the most that it co-exist with the fraudulent intent of the offender, and the checks were fictitious and invalid. The court below assumed that those who took the checks from the respondent were holders in due course just as were the banks involved in the *Kann* case (R. 25). It is obvious, however, that the respondent's victims did not become holders in due course in the sense that they could enforce payment against the drawee bank. Furthermore, the payments made to the respondent were not irrevocable as were those involved in the *Kann* case. Thus, the reasoning enunciated by this Court in construing the mail fraud statute in the *Kann* case is plainly inapplicable to the statute here under consideration.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 53

UNITED STATES OF AMERICA,

Petitioner,

vs.

PAUL DAVIS SHERIDAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 53

UNITED STATES OF AMERICA,

Petitioner,

vs.

PAUL DAVIS SHERIDAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT

Opinion Below

The opinion of the Circuit Court of Appeals (R. 21-25) is reported at 152 F. 2d 57.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered November 19, 1945 (R. 21), and a petition for rehearing was denied January 28, 1946 (R. 26-29). The petition for a writ of certiorari was filed March 5, 1946, and granted May 13, 1946. The jurisdiction of this Court is invoked under

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

Questions Presented

The question presented by the Government's petition for a writ of certiorari is: Whether a person who fraudulently cashes in one state a falsely made or forged check drawn on a bank in another state, which check is thereafter transmitted to the drawee bank for payment, has, with "fraudulent intent", "caused" a falsely made or forged security to be transported in interstate commerce within the meaning of Section 3 of the National Stolen Property Act.

If that question is answered affirmatively, two further questions, not passed on by the court below and obviously not raised by the Government's petition for certiorari, are involved:

(1) Whether reversible error was committed by the admission of certain hearsay testimony on behalf of the Government.

(2) Whether the evidence adduced by the Government is sufficient to sustain the conviction.

Statute Involved

The National Stolen Property Act of May 22, 1934, c. 333, 48 Stat. 794, 795, as amended by the Act of August 3, 1939, c. 413, 53 Stat. 1178 (18 U. S. C. 413-419), provides in pertinent part as follows:

> Sec. 2. That when used in this Act—
>
> (a) The term "interstate or foreign commerce" shall mean transportation from one State, Territory, or the District of Columbia to another State, Territory, or

the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.

(b) The term "securities" shall include any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise; or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing.

* * * * * * *

Sec. 3. Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of $5,000 or more theretofore stolen, *feloniously converted*, or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, *feloniously converted*, or taken, *or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited, or whoever with unlawful or fraudulent intent shall transport, or cause to be transported in interstate or foreign commerce, any bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or fitted to be used in falsely*

making, forging, altering, or counterfeiting any security, or any part thereof, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both: *Provided, That the provisions of this section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of (1) an "obligation or other security of the United States" as defined in section 147 of the Criminal Code (U. S. C., title 18, sec. 261) or (2) an obligation, bond, certificate, security, Treasury note, bill, promise to pay, or bank note, issued by any "foreign government" as defined in the Act of June 15, 1917, title VIII, section 4 (U. S. C., title 18, sec. 288), or by a bank or corporation of any foreign country.*[1]

Statement

Respondent was charged with violating Section 3 of the National Stolen Property Act (18 U. S. C. 415, *supra*) by an indictment in three counts filed October 27, 1944, in the United States District Court for the Eastern District of Michigan (R. 1, 2-4). Each count of the indictment alleged that respondent did, "with fraudulent intent, transport and/or cause to be transported in interstate commerce * * * a certain falsely made, forged, altered, or counterfeited security * * * knowing the same to have been falsely made, altered, forged, or counterfeited * * *." Count One covered a check for $62.50 drawn on the First National Bank of Cape Girardeau, Missouri, payable to "P. H. D. Sheridan" and purporting to be signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner"; Count Two covered an identically drawn check for the same amount; and Count Three covered a check for $50.00 drawn on the First National Bank of Boston, Massachusetts, payable to "Cash" and signed as maker by "P. H. D. Sheridan" (R. 2-4).

[1] The portions in italics were added by the amendment of August 3, 1939, *supra*.

Respondent waived the right to the assistance of counsel (R. 1, 5, 6, 7), was tried before a jury which found him guilty on each count of the indictment (R. 6), and was sentenced to imprisonment for five years on each count, the sentences to run concurrently (R. 7-8).[2]

The trial proceedings were not stenographically reported (R. 20), and respondent and counsel for the Government entered into a stipulation with respect to a statement of evidence in which it was agreed that such statement was prepared from memory and notes made during the trial and substantially sets forth the testimony and evidence presented; the statement was made part of the record upon the approval of the Trial Court and now appears at R. 17-20 (see R. 20).[3]

The Government's evidence, as disclosed by the statement of evidence, may be summarized as follows:

1. Respondent, on July 19, 1943, when he checked out of the Otsego Hotel in Jackson, Michigan, where he had registered the preceding day, presented a check for $50.00 drawn on the "First National Bank of Boston, Massachusetts", payable to "Cash" and bearing the endorsement "P. H. D. Sheridan, 230 Park Avenue, New York". The hotel clerk, who did not see respondent endorse the check, cashed it, deducting the bill of $3.50 and giving respondent $46.50 in cash. The check was returned unpaid, and, when the clerk next saw it, it bore the same endorsements as appeared on it when offered in evidence. (R. 17-18; count 3.)

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[2] The Government does not here seek to sustain the conviction on Count 3 (Petition, p. 6; Brief, p. 18) for the reason that "it is not clear [that] a check signed by the respondent in his own name as maker * * * is falsely made or forged within the general law." (Brief, p. 18.) This is discussed at p. 28, *infra*.

[3] That procedure was, of course, proper. *Miller* v. *United States*, 317 U. S. 192, 198-199; petition for rehearing denied, 317 U. S. 713.

2. About noon of the same day, July 19, 1943, respondent bought some luggage in a store in Jackson, presenting in payment a check for $62.50 drawn on the "First National Bank of Cape Girardeau, Missouri", payable to "P. H. D. Sheridan" and signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner", which it was stated had been received in the course of respondent's business. The store manager did not see respondent endorse the check, but he accepted it in payment of the luggage valued at $36.00, giving respondent $26.50 in change, and deposited it in the Jackson Bank and Trust Company. The check was later returned unpaid. (R. 18, count 1.)

3. Also about noon of July 19, 1943, respondent cashed a check for $62.50 (drawn identically with the check described in the preceding paragraph) at the National Bank of Jackson. The assistant cashier who had approved payment testified that the records of the bank showed that the check was forwarded to the drawee bank for payment. It was later returned marked unpaid. (R. 18-19; count 2.)

4. That assistant cashier, after being qualified as an expert in banking matters, testified, over respondent's objection, that from the endorsements on the three checks all were presented for payment in Jackson, the Boston check had been forwarded to Boston and the other two checks had been forwarded to Missouri, and all had been returned unpaid to the forwarding bank marked no account (R. 19).

5. A Jackson police officer testified, over respondent's objection, that he had learned through police channels that respondent had been arrested in Eau Claire, Wisconsin, on July 20, 1943 (R. 19).

6. An agent of the Federal Bureau of Investigation testified "that his office had conducted an investigation in Washington, D. C., and that the United States Department of

Commerce has no agency 'U. S. E. F. C. 14A,' or one 'A. J. Davis, Commissioner'." (R. 19.) Respondent objected that such testimony constituted hearsay (R. 19), and on cross-examination the witness admitted that he had not personally conducted the investigation and based his statements on reports prepared by his Department (R. 20).

At the end of the presentation of the Government's evidence, respondent's motion to dismiss was denied, and his motion to keep from the jury various aliases set forth in the indictment was granted (R. 20). The Government then closed, and respondent closed without offering any evidence (R. 20).

A motion for a new trial (R. 8-13) was denied (R. 14), and respondent filed a notice of appeal, specifying, among other things, that: (1) the Trial Court erred in matters of law and in admitting certain testimony and documents into evidence over respondent's objection; (2) the verdict was contrary to the evidence and not supported by sufficient evidence; and (3) the trial court erred in giving and refusing to give certain instructions[4] (R. 14-15).

The Circuit Court of Appeals reversed, holding, on authority of the decision of this Court in *Kann* v. *United States*, 323 U. S. 88 (which reversed a conviction under the mail fraud statute, section 215 of the Criminal Code, 18 U. S. C. 338), that the activities of respondent as disclosed by the proof adduced by the Government did not contravene section 3 of the National Stolen Property Act (R. 21-25); no other point was discussed or passed upon (R. 23).

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[4] The instructions given and the rulings on instructions requested do not appear in the record. If the cause should be remanded to the Circuit Court of Appeals for further proceedings, it is suggested that it would be appropriate to suggest to that Court in the remand that it exercise its powers to secure a complete bill of exceptions, including the instructions given and all pertinent rulings in connection therewith. See *Miller* v. *United States*, 317 U. S. 192, 199-200; petition for rehearing denied, 317 U. S. 713.

Summary of Argument

Part I

Assuming, without conceding, the sufficiency of the Government's evidence, no violation of the statute is shown because respondent, within the meaning of the statute, did not "cause" the interstate transportation of the checks, or, in the alternative, did not "with fraudulent intent" "cause" them to be so transported.

A. Since there is no claim that respondent himself transported the checks, the conviction cannot be sustained unless he "caused" the interstate transportation which it is assumed occurred when the checks, after respondent had cashed them, were forwarded to the out-of-state banks on which they were drawn. Respondent did not direct, suggest, or encourage that interstate transportation; there is nothing to indicate that he had any conscious knowledge, intent, plan, or desire that the checks would be so transported; and that interstate transportation was not an essential or integral part of the asserted fraud because respondent had obtained his objective when he successfully cashed the checks. The only basis for holding that respondent "caused" the interstate transportation of the checks is the circumstance that such transportation would not have resulted if he had not cashed them. The word "cause" as used in the statute should not be so broadly construed. Such a broad construction finds little actual support in judicial precedent, extends the statute beyond its purpose and produces absurd and unjust results. The purpose of the statute as disclosed by its background and legislative history is the punishment of those who used or brought the use of interstate transportation as an integral part of carrying out their illegal activities. There is nothing to indicate that Congress intended to reach illegal activities, such

as those in which respondent is claimed to have engaged, which are essentially local in character and incidentally result in interstate transportation which is neither essential nor substantially related to the carrying out of these activities.

B. If it is nevertheless believed that respondent "caused" the interstate transportation of the checks, he did not "cause" that transportation "with fraudulent intent" as required by the statute. The provisions of the 1939 amendment to the statute which cover spurious securities are *pari materia* with the mail-fraud statute (Criminal Code Section 215, 18 U. S. C. 338) and, on the basis of the construction of the mail fraud statute in *Kann* v. *United States*, 323 U. S. 88, and *Dyhre* v. *Hudspeth*, 106 F. 2d 286 (C. C. A. 10), the asserted activities of respondent do not contravene the instant statute. The difference in language used in the two statutes is immaterial when the similarity of plan and purpose of the two statutes is considered. Both depend upon the element of fraud for their operation and there is no persuasive or logical reason for supposing that Congress meant to be more solicitous in protecting the channels of interstate transportation against becoming avenues of fraud than it has been of the mails. The only sound construction of the requirement of fraudulent intent in the 1939 amendment to section 3 of the National Stolen Property Act is that it means that the interstate transportation of spurious securities must be for the purpose of executing a fraudulent scheme. The effect of any other construction is to read the requirement of fraudulent intent out of the statute. Consistently with the legislative purpose of the statute, the spurious securities provisions of the 1939 amendment cover the interstate transportation of spurious securities as an integral part of executing a fraudulent scheme, leaving other situations to be dealt with by appropriate

state law. Respondent's asserted fraudulent scheme was completed when he cashed the checks and their subsequent interstate transportation was not in furtherance of that scheme. Accordingly, respondent did not "with fraudulent intent" "cause" the interstate transportation of the checks within the meaning of the statute.

Part II

If the question of the construction of the statute is resolved unfavorably to respondent, this Court should grant a new trial because reversible error was committed by the admission of certain hearsay testimony and because the evidence of the Government is insufficient to sustain the conviction. Neither of those grounds was passed upon below or presented by the petition for a writ of certiorari, but we believe that under the circumstances of this case this Court should exercise its undoubted power to consider them.

A. The testimony of an agent of the Federal Bureau of Investigation with respect to an investigation conducted by his office which was based on reports prepared by his department was clearly hearsay and its admission constituted reversible error. The same is true of the testimony of a Jackson police officer that he had learned through police channels of the arrest of respondent. The admission of the hearsay testimony of those two officers cannot be characterized as "mere harmless error".

B. The evidence of the Government is insufficient to sustain the conviction on Counts One and Two of the indictment, and since the Government does not seek to sustain the conviction on Count Three, there should be a new trial. The Government presented no direct evidence of the existence of the essential elements of fraudulent intent and knowledge of the spurious character of the securities. The

circumstantial evidence on those elements discloses only that respondent negotiated two identically drawn checks, both of which were dishonored by the drawee bank because the purported maker had no account, and that an investigation disclosed that the United States Department of Commerce had no agency or agent bearing the name of the purported maker. That is not sufficient to support an inference that respondent passed those two checks with knowledge that they were spurious and with fraudulent intent. The fact that a person passed a forged check or counterfeit money does not prove or justify an inference that he knew its spurious character or that he intended to defraud. Something more than the naked act of passing must be shown, and that is lacking here.

ARGUMENT

PART I

The Alleged Activities of Respondent Did Not Contravene the Statute

Introduction

Respondent's conviction was for violating the portion of the 1939 amendment to section 3 of the National Stolen Property Act which deals with spurious securities and in pertinent part provides punishment for "whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited" (*ante*, pp. 3-4).[5] Whatever may be the proper interpretation of that language, it is obvious that the offense

[5] The term "securities" as defined in section 2 of the statute includes checks (see *ante*, pp. 2-3).

The 1939 amendment further provides that it shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of

thereby created consists of four elements—there must be (1) unlawful or fraudulent intent, (2) transportation in interstate or foreign commerce, (3) a falsely made, forged, altered, or counterfeited security, and (4) knowledge of the spurious character of the security. Assuming for the purposes of this Part I, what is not conceded as is evident from Part II of this argument, that the evidence of the Government was sufficient to show the presence of those four elements, namely, that respondent had a fraudulent intent at some time in connection with the matter,[6] that the checks were forwarded in interstate commerce by banks in Jackson after respondent had cashed them, that at least one of them was falsely made or forged and that respondent knew that,[7]

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an "obligation or other security of the United States" as defined in 18 U. S. C. 261, or of certain foreign securities (*ante*, pp. 3-4). The words "obligation or other security of the United States", as defined in 18 U. S. C. 261, include checks "drawn by or upon authorized officers of the United States". If the two checks which were signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner" (counts 1 and 2) fall within that definition, the conviction should not stand because the Government does not here urge error with respect to the reversal of the conviction on the third count, covering the check signed by "P. H. D. Sheridan" as maker (Brief, p. 18). Since those two checks were drawn on a private bank, they would not fall within that definition unless A. J. Davis was an authorized officer of the United States. The Government has attempted to show that no such officer exists (R. 19-20).

[6] It is true that the statutory language is "unlawful or fraudulent intent", but the question presented by the Government (Brief, p. 2) and argued throughout refers only to fraudulent intent. From that we assume that the Government does not contend that respondent had any unlawful intent as distinguished from his asserted fraudulent intent. Indeed, there does not seem to be any basis for such a contention. This argument therefore considers only the question of fraudulent intent.

[7] Since the sentences were concurrent, the conviction may be sustained on any count of the indictment. The Government does not contend that any of the checks were "altered" or "counterfeited"; does not urge error with respect to the reversal on the third count of the indictment because of uncertainty as to whether the check there involved was "falsely made" or "forged"; and limits its argument to a contention that the checks covered by counts one and two were "falsely made" or "forged" (Brief, p. 18). For a discussion of whether the check covered by the third count was "falsely made" or "forged" see *infra* p. 28.

it is nevertheless submitted that no violation of the statute is shown because respondent, within the meaning of the statute, did not "cause" the interstate transportation of the checks, or, in the alternative, did not "with fraudulent intent" "cause" them to be so transported.

A. *Respondent did not "cause" the interstate transportation of the checks.*

Since there is no claim that respondent himself transported the checks, his conviction cannot be sustained unless he can be said to have "caused" the interstate transportation which it is assumed occurred when the checks, after respondent had cashed them, were forwarded by the Jackson banks to the out-of-state banks on which they were drawn. This Court has not passed on whether interstate transportation is "caused" under such circumstances, and, in considering whether the use of the mails was "caused" under similar circumstances, without deciding the matter, indicated that there was some doubt whether "the defendants may be said to have 'caused' the mailing of the checks". *Kann* v. *United States*, 323 U. S. 88, 93.

Respondent did not direct, suggest, or encourage the interstate transportation of the checks. There is nothing to indicate that he had any conscious knowledge, intent, plan or desire that they be so transported; indeed, their transportation was the sure means of revealing his asserted fraud. Moreover, the interstate transportation was not an essential or integral part of the fraud because respondent had obtained his objective when he successfully cashed the checks. The only basis for holding that respondent "caused" the interstate transportation of the checks is the circumstance that such transportation would not have resulted if he had not cashed them. The word "cause" as used in the statute should not be so broadly construed.

True, that word, which is used in numerous sections of Title 18 of the United States Code defining offenses against the postal service and against foreign and interstate commerce,[8] has been characterized as a word of "very broad import" with the well known sense of "bringing about". *United States* v. *Kenofskey*, 243 U. S. 440, 443. And, it has been held that a person may "cause" interstate transportation even though no specific direction is given to that effect. See *Backun* v. *United States*, 112 F. 2d 635 (C. C. A. 4); *United States* v. *Turley*, 135 F. 2d 867 (C. C. A. 2), certiorari denied, 320 U. S. 745; *Millette* v. *United States*, 4 F. 2d 635 (C. C. A. 7).[9] It does not follow, however, that a person has "caused" interstate transportation merely because it may be the natural and probable consequence

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[8] For example:
18 U. S. C. 334—Mailing obscene matter
18 U. S. C. 335—Mailing libelous and indecent matter on wrappers or envelopes
18 U. S. C. 336—Lottery circulars not mailable
18 U. S. C. 338—Using mails to promote frauds
18 U. S. C. 338a—Mailing threatening communications
18 U. S. C. 340—Poisons or explosives not mailable
18 U. S. C. 341—Use of mails for advertisements of intoxicating liquors in prohibition states
18 U. S. C. 351—Inclosing higher in lower class matter
18 U. S. C. 358—Fraudulently increasing weight of mail
18 U. S. C. 387—Importing lottery tickets.
18 U. S. C. 388—Intoxicating liquors; by interstate shipment
18 U. S. C. 390—Intoxicating liquors; shipping packages in interstate commerce not plainly marked
18 U. S. C. 396—Importing and transporting obscene books
18 U. S. C. 398—White-slave traffic
18 U. S. C. 400—White-slave traffic
18 U. S. C. 407a—Transporting strikebreakers
18 U. S. C. 408—Motor vehicles
18 U. S. C. 408a—Kidnapped persons
18 U. S. C. 415—National Stolen Property Act
18 U. S. C. 419b—National Cattle Theft Act

[9] There are similar holdings with respect to "causing" the use of the mails. See *United States* v. *Kenofskey*, 243 U. S. 440; *Demolli* v. *United States*, 144 Fed. 363 (C. C. A. 8); *Freeman* v. *United States*, 244 Fed.

or the reasonably foreseeable result of action intentionally taken. The above cited cases involved more than the mere passive occurrence of a natural and probable consequence, and in all of them the interstate transportation was essential to, or substantially helped in, carrying out the criminal activity involved and was an integral part of that activity. Thus, there was evidence of a conscious knowledge and desire that interstate transportation would be used in the *Backun* case, 112 F. 2d at 636 and 638; the maintenance of a market for disposing of stolen securities by the defendants in the *Turley* case induced and encouraged interstate transportation which materially aided them in their illegal activities; and, in the *Millette* case there was evidence that it was "Millette's purpose and plan and contrivance to have these cars transported to a place beyond the Minnesota boundaries", 4 F. 2d at 636.[10] Moreover, the activities of the defendants in the *Backun* and *Turley* cases were such that they might be considered as having aided and abetted

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1 (C. C. A. 7), certiorari denied, 245 U. S. 654; *Grant* v. *United States*, 268 Fed. 443 (C. C. A. 6), certiorari denied, 256 U. S. 700; *Butler* v. *United States*, 53 F. 2d 800 (C. C. A. 10); *Smith* v. *United States*, 61 F. 2d 681 (C. C. A. 5), certiorari denied, 288 U. S. 608; *United States* v. *Weisman*, 83 F. 2d 470 (C. C. A. 2), certiorari denied, 299 U. S. 560, rehearing denied, 299 U. S. 621; *Corbett* v. *United States*, 89 F. 2d 124 (C. C. A. 8); *Clarke* v. *United States*, 132 F. 2d 538 (C. C. A. 9), certiorari denied, 318 U. S. 789; *Blue* v. *United States*, 138 F. 2d 351 (C. C. A. 6), certiorari denied, 322 U. S. 736, 737, rehearing denied, 322 U. S. 771; *United States* v. *Cohen*, 145 F. 2d 82 (C. C. A. 2), certiorari denied, 323 U. S. 799; *Richardson* v. *United States*, 150 F. 2d 58 (C. C. A. 6).

[10] Similar threads of conscious knowledge, desire, plan, intent or direction and of the substantial relation of the use of the mails to the consummation of the improper activities being conducted run through most of the cases involving the use of the mails which are set forth in note 9, *ante*. Thus, the action in *United States* v. *Kenofskey* was "deliberately calculated" to effect the use of the mails which was essential to the consummation of the fraud, 243 U. S. 440, 443. The use of the mails was obviously necessary in order to conduct the fraudulent business activities involved in *Freeman* v. *United States*, 244 Fed. 1 (C. C. A. 7), certiorari denied, 245 U. S. 654; *Butler* v. *United States*, 53 F. 2d 800 (C. C. A. 10); *Blue* v. *United States*, 138 F. 2d 351 (C. C. A. 6), certiorari denied, 322 U. S.

the commission of the offense and hence were guilty as principals by force of section 332 of the Criminal Code (18 U. S. C. 550). This point was one basis for the decision in the *Backun* case. See also *Schrader* v. *United States*, 94 F. 2d 926 (C. C. A. 8), as explained by *La Page* v. *United States*, 146 F. 2d 536 (C. C. A. 8). That is not the case here, for there was no unlawful act independent of that which is sought to be charged to respondent.

There are several decisions by the lower federal courts, but none by this Court, that the use of the mails or the channels of interstate commerce by banks in clearing checks is "caused" by persons who previously negotiated them for improper purposes or who were engaged in improper activities in connection with which the checks were previously negotiated. While causation is discussed in terms of natural and probable consequence and reasonably foreseeable result in many of these decisions, most of them, like those just discussed, actually involve situations in which there was a conscious knowledge, plan, intent, desire or direction that the mails or the means of interstate commerce would be employed and in which that employment was either essential or closely related to the execution of the improper activities in which the defendants were engaged.[11] As

736, 737, rehearing denied 322 U. S. 771; and *United States* v. *Cohen*, 145 F. 2d 82 (C. C. A. 2), certiorari denied, 323 U. S. 799. The defendants in *Grant* v. *United States*, 268 Fed. 443 (C. C. A. 6), certiorari denied, 256 U. S. 700; *Corbett* v. *United States*, 89 F. 2d 124 (C. C. A. 8); and *Richardson* v. *United States*, 150 F. 2d 58 (C. C. A. 6), gave directions which naturally lead to the use of the mails. And, the defendants in *Smith* v. *United States*, 61 F. 2d 681 (C. C. A. 5), certiorari denied, 288 U. S. 608, and *Clarke* v. *United States*, 132 F. 2d 538 (C. C. A. 9), certiorari denied, 318 U. S. 789, actually knew of, and probably acquiesced in, the use of the mails.

[11] Thus, *Spear* v. *United States*, 246 Fed. 250 (C. C. A. 8), certiorari denied, 246 U. S. 667; *Savage* v. *United States*, 270 Fed. 14 (C. C. A. 8), certiorari denied, 257 U. S. 642; *Tincher* v. *United States*, 11 F. 2d 18 (C. C. A. 4), certiorari denied, 271 U. S. 664; *Goodman* v. *United States*, 97 F. 2d 197 (C. C. A. 3), certiorari dismissed, 305 U. S. 578; *Hart* v. *United States*, 112 F. 2d 128 (C. C. A. 5), certiorari denied, 311 U. S. 684;

previously stated, that is not the situation here, and accordingly it should not be said that respondent "caused" the interstate transportation of the checks, which was an incidental result and not an integral part of his alleged activities. See opinion below (R. 21-25); *United States* v. *Wood*, 58 F. Supp. 451 (N. D. W. Va.); *United States* v. *Hopper*, 63 F. Supp. 612 (D. Ore.); *United States* v. *Flores*, 66 F. Supp. 880 (Dist. Ct. Virgin Islands, Div. St. Thomas and St. John); *Spillers* v. *United States*, 47 F. 2d 893 (C. C. A. 5); *Stapp* v. *United States*, 120 F. 2d 898, 899 (C. C. A. 5).

The broad construction of "cause" which the Government is forced by the instant circumstances to urge not only finds little actual support in judicial precedent, but in addition would extend the statute beyond its purpose and would produce absurd and unjust results. For those reasons it should not be adopted. The axiom that criminal statutes should be narrowly or strictly construed, of course, does not mean that the words employed are to be given their narrowest possible meaning or that the evident meaning and purpose of legislation is to be distorted or nullified.

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and *Harris* v. *United States*, 140 F. 2d 567 (C. C. A. 4), all involved checks deposited or presented by defendants for collection, and the use of some means of transmission was obviously essential to the consummation of the plans of the defendants. *United States* v. *Lowe*, 115 F. 2d 596 (C. C. A. 7), certiorari denied, 311 U. S. 717; *Guardalibini* v. *United States*, 128 F. 2d 984 (C. C. A. 5); *United States* v. *Feldman*, 136 F. 2d 394 (C. C. A. 2), affirmed on a different point, 323 U. S. 487, rehearing denied, 323 U. S. 811; and *United States* v. *Citrin*, 58 F. Supp. 766 (S. D. N. Y.), all involved check kiting schemes which are entirely dependent upon the blank clearance system and its attendant delays for success. In *Shea* v. *United States*, 251 Fed. 440 (C. C. A. 6), certiorari denied, 248 U. S. 581, one of the defendants suggested that the dupe "send" a check so that the illicit gain could be secured.

Decker v. *United States*, 140 F. 2d 378 (C. C. A. 4), certiorari denied, 321 U. S. 792, involved a continuing scheme to defraud.

Clarke v. *Sanford*, 156 F. 2d 115 (C. C. A. 5), pending on a petition for a writ of certiorari, No. 397 at the present Term, and *Tolle* v. *Sanford*, 58 F. Supp. 695 (N. D. Ga.), both of which involve the application of the instant statute to circumstances substantially similar to those involved in this case, are to the contrary.

See *United States* v. *Gaskin*, 320 U. S. 527, 529-530; *Singer* v. *United States*, 323 U. S. 338, 341-342. It does mean, however, that the language used must be taken in a reasonable sense which does not work manifest injustice (*Baender* v. *Barnett*, 255 U. S. 224), and that the offense must be stated with appropriate definiteness which should not be judicially enlarged, *Pierce* v. *United States*, 314 U. S. 306. The latter is particularly true with respect to federal criminal statutes, such as the instant one, which supplement state law, because the administration of criminal justice rests primarily with the states and because a prosecution for violation of the law of a state does not bar on the ground of double jeopardy a prosecution for violation of a federal statute arising out of the same circumstances. See *Jerome* v. *United States*, 318 U. S. 101, 104-105. And, this Court has emphasized that broad statutory language must be construed consonantly with, rather than independently of, the legislative purpose, especially when absurd or unjust results would otherwise occur. See *Chatwin* v. *United States*, 326 U. S. 455, 464-465; *United States* v. *Carbone*, 66 S. Ct. 734, 736, 738 (No. 474, O. T. 1945); *Sorrells* v. *United States*, 287 U. S. 435.

Since the statutory language here involved should "be read and applied in light of the evils which gave rise to the statute and the aims which the proponents sought to achieve" (*United States* v. *Carbone*, *supra*, at p. 736), it is necessary to consider those evils and aims as revealed by the background and legislative history of the National Stolen Property Act. As the title of the Act indicates (48 Stat. 794), it was adopted to extend generally the provisions of the National Motor Vehicle Theft Act to other stolen property, and the evils which prompted its enactment were the same as those which led to its predecessor,[12] namely,

[12] See *Brooks* v. *United States*, 267 U. S. 432, 438-439.

the alarming and widespread use which criminals were making of the modern facilities of interstate and foreign commerce to carry out their illegal activities and to circumvent effective prosecution by state authorities.[13] There is nothing in the legislative history of the 1939 amendment, which *inter alia* brought spurious securities and counterfeiting tools within section 3 of the Act (see pp. 3-4, *ante*), to indicate that Congress had any different evil in mind.[14] In the light of that background and that history it is believed that the purpose of Congress in enacting the Act and the amendment of 1939 was to punish those who used or brought about the use of interstate transportation as an integral part of carrying out their illegal activities, and, conversely, that Congress did not intend to reach illegal activities, such as those in which respondent is claimed to have engaged, which are essentially local in character and incidentally result in interstate transportation which is neither essential nor substantially related to the carrying out of those activities. There is nothing in the legislative history of the statute indicating that state authorities were unable to deal effectively with persons who uttered forged checks within

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[13] That was stated by Senator Ashurst, the sponsor of the Act in the Senate, as follows (78 Cong. Rec. 6981):

> "Gangsters who now convey stolen property, except vehicles, across the State line, with that immemorial gesture of derision, thumb their nose at the officers. This bill extends the provisions of the National Motor Vehicle Theft Act to other stolen property described in the bill."

See also H. Rep. 1462 and S. Rep. 538, 73d Cong., 2d sess. Those reports sketch the history of previous legislative attempts to deal with the problem. Hearings which were held on one of those attempts (H. R. 10287, 70th Cong., 1st sess.) stressed the difficulties confronting state officials in effectively prosecuting criminals operating across state lines, and particularly the difficulty of securing witnesses (see Hearings on H. R. 10287, vol. 491 H. Comm. Hearings). That particular difficulty is not present in this case.

See also *Husten* v. *United States*, 95 F. 2d 168 (C. C. A. 8).

[14] See H. Rep. 422 and S. Rep. 674, 76th Cong., 1st sess.

their jurisdiction even though such checks were drawn on out-of-state banks, and, likewise, there is no indication that Congress intended to assist the states in dealing with such persons. Indeed, the undesirability of covering essentially local offenses was pointed out when the 1939 amendment was discussed in the Senate.[15] There would thus appear to be no more warrant for comprehending the alleged activities of respondent within the statute because of the incidental interstate transportation of the checks than there was for holding that the broad sweep of the language of the Federal Kidnapping Act (18 U. S. C. 408a), which like the National Stolen Property Act was part of the Congressional program to assist the states in dealing with the interstate ramifications of crime, applied to "general transgressions of morality involving the crossing of state lines". See *Chatwin* v. *United States*, 326 U. S. 455, 464-465. Moreover, to do that would have the absurd result of putting the federal courts in the police court business when there is no indica-

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[15] The following significant colloquy occurred between Senator O'Mahoney, the sponsor of the bill in the Senate, and Senator King, when the latter requested an explanation of the bill (84 Cong. Rec. 9411-9412):

Mr. O'Mahoney: Mr. President, this bill came from the Judiciary Committee with a unanimous report. The National Stolen Property Act is sought to be amended by this measure, which originated in the House and has the support of the Department of Justice, so as to extend its provisions to embezzled property as well as to counterfeit securities. The Senate committee amended the bill to include the materials with which counterfeiting is carried on. I am sure the bill is thoroughly meritorious, and should be passed.

Mr. King: Mr. President, will the Senator yield?

Mr. O'Mahoney: Certainly.

Mr. King: The Senator will recall that a short time ago we passed an act under the terms of which larceny, when the transportation was from one jurisdiction to another, was made a Federal offense. I was opposed to the bill, and am glad to know that the President vetoed it. This bill does not go so far as to make larceny, or other offenses which are purely intrastate, interstate in character, subjecting the offenders to Federal jurisdiction.

Mr. O'Mahoney: The pending bill is not of the character of the measure to which the Senator is referring. The bill deals with the transportation

tion that the states are unable to deal effectively with such activities, and would have the unjust result of subjecting offenders to heavy double punishment for what is in essence a single, local offense. See *United States* v. *Wood*, 58 F. Supp. 451 (N. D. W. Va.); *United States* v. *Hopper*, 63 F. Supp. 612 (D. Ore.); *United States* v. *Flores*, 66 F. Supp. 880 (Dist. Ct. Virgin Islands, Div. St. Thomas and St. John).[16] That should not be done without a clear Congressional mandate. See *Chatwin* v. *United States, supra; Jerome* v. *United States*, 318 U. S. 101, 104-105. Since such a mandate is lacking here, it should not be said that respondent "caused", within the meaning of the statute, the interstate transportation which it is assumed occurred when the banks in Jackson forwarded the checks to the out-of-state banks on which they were drawn.

B. *Respondent did not "with fraudulent intent" "cause" the interstate transportation of the checks*

If, despite the foregoing, this Court believes that respondent "caused" the interstate transportation of the checks, we submit that he did not "cause" that transportation with "fraudulent intent" as required by the statute. The basis

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of such property in interstate commerce, a character of offense which cannot be handled except in this manner.

Mr. King: With that understanding, I shall not object. However, I look with much apprehension upon the constant encroachment by the Federal Government and its assertion of jurisdiction over matters which, under our form of government, belong especially, peculiarly, and solely to the States.

Mr. O'Mahoney: Let me give the Senator an instance of what is needed under the present situation. The stock certificates of the New York Central Railroad were counterfeited in the City of Chicago, and were sold throughout the West, indeed, as a matter of fact, throughout the country. This bill would make the transportation of counterfeit securities of an interstate corporation a Federal offense. It is a wholly harmonious provision.

[16] That is the situation here. Respondent is now serving in a Michigan prison a state conviction which was based on the transactions involved in this case.

for our contention is that the provisions of the 1939 amendment to the statute which cover spurious securities are *pari materia* with the mail fraud statute (Criminal Code § 215, 18 U. S. C. 338) and that on the basis of the construction of the mail fraud statute in *Kann* v. *United States*, 323 U. S. 88, and *Dyhre* v. *Hudspeth*, 106 F. 2d 286 (C. C. A. 10), the asserted activities of respondent do not contravene the instant statute. This contention is supported by the opinion below (R. 21-25) and by *United States* v. *Wood*, 58 F. Supp. 451 (N. D. W. Va.); *United States* v. *Hopper*, 63 F. Supp. 612 (D. Ore.); and *United States* v. *Flores*, 66 F. Supp. 880 (Dist. Ct. Virgin Islands, Div. St. Thomas and St. John). To the contrary are *Clarke* v. *Sanford*, 156 F. 2d 115 (C. C. A. 5), pending on petition for a writ of certiorari, No. 397 at the present Term, and *Tolle* v. *Sanford*, 58 F. Supp. 695 (N. D. Ga.).

It is true that the pertinent language of the two statutes differs,[17] but the difference seems immaterial, as the court below said (R. 25), when the similarity of plan and purpose of the statutes is considered. They appear to be the only offenses against the postal service and against foreign and interstate commerce which are contained in Chapters 8 and 9 of Title 18 of the United States Code which depend upon the element of fraud for their operation. There is no persuasive or logical reason for supposing that Congress meant

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[17] The pertinent language of the mail fraud statute is:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, * * * shall, for the purpose of executing such scheme or artifice or attempting so to do, place or cause to be placed, any letter * * * in any post office * * *."

The pertinent language of the National Stolen Property Act (see pp. 2-4, *ante*) is:

"* * * whoever with * * * fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited * * *."

to be more solicitous in protecting the channels of interstate transportation against becoming avenues of fraud than it has been of the mails.

The gist of the offense under the mail fraud statute is the use or the causing of the use of the mails for the purpose of executing a fraudulent scheme. Similarly, the gist of the offense under the spurious securities provisions of the 1939 amendment of the instant statute is not, contrary to the argument of the Government and the holdings in *Clarke* v. *Sanford* and *Tolle* v. *Sanford, supra,* the interstate transportation or causing of the interstate transportation of known spurious securities; there must be in addition a fraudulent intent. The only sound construction of that requirement is that it means that the interstate transportation must be for the purpose of executing a fraudulent scheme, which is the requirement of the mail fraud statute with respect to using the mails. That is so because the effect of any other construction is to read the requirement of fraudulent intent out of the statute.

It is true that spurious securities are not legitimate articles of commerce, and Congress might have excluded them from the channels of interstate commerce because of their spurious character by forbidding the transportation of them with knowledge of their character, as Congress has done with respect to articles which are deemed injurious to the public health,[18] or the public morals,[19] or which are otherwise tainted with an aura of illegality.[20] The fact that Congress

[18] E.g., the Pure Food and Drug Act of June 30, 1906, c. 3915, 34 Stat. 768. See *Hipolite Egg Co.* v. *United States,* 220 U. S. 45.

[19] E.g., the Act of March 2, 1895, c. 191, 28 Stat. 963, for the suppression of the lottery traffic—see *Champion* v. *Ames,* 188 U. S. 321—, and the White Slave Traffic Act of June 25, 1910, c. 395, 36 Stat. 825 (18 U. S. C. 397-404)—see *Hoke* v. *United States,* 227 U. S. 308.

[20] E.g., the National Motor Vehicle Theft Act (18 U. S. C. 408), see *Brooks* v. *United States,* 267 U. S. 432; and, the stolen property provisions of section 3 of the National Stolen Property Act.

did not do that in the instant statutory provisions sufficiently indicates that Congress was not concerned with preventing the interstate transportation of spurious securities with knowledge of their character. Congress was concerned rather with preventing the effectuation of fraud through the interstate transportation of spurious securities; otherwise the requirement of fraudulent intent is superfluous and meaningless. In other words, the instant statutory provisions do not purport to reach spurious securities, the interstate transportation of them, or fraud in connection with them generally; consistently with the legislative purpose (see *ante*, pp. 18-21), those provisions cover the interstate transportation of spurious securities as an integral part of executing a fraudulent scheme, leaving other situations to be dealt with by appropriate state law. Cf. *Kann* v. *United States*, 323 U. S. 88, 95. Like the mail fraud statute, the instant provisions of the 1939 amendment are aimed not at the things employed (mailable matter in the one case and spurious securities in the other) or the transmission of them (through the mails, and by interstate transportation) but at the transmission of them in the promotion of fraud.

Construing the statute as becoming operative only when interstate transportation of spurious securities is in furtherance of a fraudulent scheme does not unduly restrict the statute [21] but instead makes it consonant with the legislative purpose, which, as previously discussed (*ante*, pp. 18-21) was to punish interstate transportation which was an inte-

[21] As so construed, the statute reaches the illustration posed by the Government (Brief, pp. 31-32) to support its argument to the contrary. B, in that example, may be said, consistently with the interpretation of cause for which we contend (*ante*, pp. 13-21), to have "caused" the interstate transportation of the spurious security, and since he intended to utter it, the interstate transportation was for the purpose of executing a scheme to defraud. Hence he is guilty of a violation of the statute. A, who knowingly makes that violation possible, is at the least an aider and abetter and hence liable as a principal under section 332 of the Criminal Code (18 U. S. C. 550).

gral part of criminal activity, in this instance, fraud. And, it would eliminate the absurd and unjust results which are pointed out at pp. 20-21, *ante*, of providing federal punishment for essentially local offenses with which the states are competent to deal.

The alleged activities of respondent would not support a conviction under the mail fraud statute, if the means employed by the Jackson banks to forward the checks had been the mails. *Kann* v. *United States*, 323 U. S. 88; *Dyhre* v. *Hudspeth*, 106 F. 2d 286 (C. C. A. 10). Since, for the reasons stated, the instant statutory provisions are *pari materia* with the mail fraud statute, it follows that respondent has not violated them. See opinion below (R. 21-25); *United States* v. *Wood*, 58 F. Supp. 451 (N. D. W. Va.); *United States* v. *Hopper*, 63 F. Supp. 612 (D. Ore.); *United States* v. *Flores*, 66 F. Supp. 880 (Dist. Ct. Virgin Islands, Div. St. Thomas and St. John). Here, as in the *Kann* and *Dyhre* cases, the asserted fraudulent scheme was complete when respondent cashed the checks and received the money which was his objective; the persons who cashed the checks became holders in due course and the owners of them;[22] and the subsequent interstate transportation of the checks by them or by takers from them was not in furtherance of the asserted fraudulent scheme. The invalidity of the checks is immaterial. *Dyhre* v. *Hudspeth*, *United States* v. *Wood*, *United States* v. *Hopper*, *United States* v. *Flores*, *supra*; opinion below (R. 21-25). Accordingly, respondent did not "with fraudulent intent" "cause" the interstate transportation of the checks within the meaning of the statute.

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[22] See Michigan Compiled Laws of 1929, § 9301; *American Surety Co.* v. *Savings Bank*, 242 Mich. 581.

Part II

Respondent Is In Any Event Entitled to A New Trial

Introduction

The preceding part of this argument has been concerned with the question decided below and raised by the petition for a writ of certiorari. If that question is resolved by this Court favorably to respondent, the matter is, of course, at an end. If that question is not so resolved, then other questions, relating chiefly to the admission of certain testimony and to the sufficiency of the Government's evidence, must be decided before respondent's conviction can be finally upheld. The purpose of this Part II is to urge this Court, if it should resolve that question adversely to respondent, to consider those other questions and on the basis thereof grant a new trial to respondent, instead of remanding the cause to the Circuit Court of Appeals for further proceedings.

The grounds justifying a new trial, either of which is sufficient, are that reversible error was committed by the admission of certain hearsay testimony and that the evidence of the Government is insufficient to sustain the conviction. Those grounds were raised in the court below (R. 14) but were not passed on there because that was unnecessary (R. 23). Obviously, they are not presented by the Government's petition for a writ of certiorari. We realize that this Court does not consider matters, such as these grounds, which are not passed on below or presented by the petition for a writ of certiorari, except in exceptional cases where the ends of justice are served by so doing, and then only in cases coming from the federal courts. See generally Robertson and Kirkham, "Jurisdiction of the Supreme Court of the United States," § 389. We, therefore, make our request that this Court grant a new trial if the

judgment below is reversed, because we believe that this case is an exceptional case of that nature which fulfills those requirements. Respondent is now confined in a Michigan state prison, is without funds and is unable to employ counsel of his own choice. The entire case is here and this Court has full power to decide all questions involved in it. The validity of the grounds which we assert are easily demontrable and clearly warrant a new trial. Accordingly, we turn to a consideration of those grounds.

A. *The Admission of Hearsay Testimony Constituted Reversible Error*

The testimony of an agent of the Federal Bureau of Investigation to the effect that the United States Department of Commerce had no agency "U. S. E. F. C. 14A" or one "A. J. Davis, Commissioner," which was taken over respondent's objection, was based on reports prepared by his department of an investigation which he did not personally conduct (R. 19-20). That testimony was clearly hearsay, and its admission constituted reversible error. See *United States* v. *Campanaro*, 63 F. Supp. 811 (E. D. Pa.), in which it was held that a new trial was necessary because of the admission of hearsay testimony of a Secret Service agent as to what "our records show." See also *Hopt* v. *Utah*, 110 U. S. 574; *Cook* v. *United States*, 138 U. S. 157; *Donnelly* v. *United States*, 228 U. S. 243, rehearing denied, 228 U. S. 708.

Likewise the testimony of a Jackson police officer that he had learned through police channels of the arrest of respondent, which was also taken over respondent's objection (R. 19), was inadmissible hearsay. In addition it was improper because it impugned respondent's character although respondent did not put his character in issue. See Wigmore on Evidence, 3d Ed., vol. 1, § 57.

The admission of the hearsay testimony of those two officers cannot be characterized as "mere harmless error," not warranting a new trial, within the meaning of Section 269 of the Judicial Code (28 U. S. C. 391). At best the Government's case was not a strong one—indeed it is earnestly believed it is not sufficient to sustain the conviction—and it cannot be said that the admission of that testimony was not prejudicial. See *Kotteakos* v. *United States*, 66 Sup. Ct. 1239 (Nos. 457, 458, O. T. 1945); *Bihn* v. *United States*, 66 Sup. Ct. 1172 (No. 675, O. T. 1945); *Bollenbach* v. *United States*, 326 U. S. 607; *United States* v. *Campanaro*, *supra*.

B. *The Evidence Presented by the Government Is Insufficient to Sustain the Conviction*

A new trial is also warranted because of the insufficiency of the Government's evidence. The Government (Brief, p. 18) does not seek to sustain the conviction on Count Three of the indictment, which covered the check apparently signed by respondent in his own name as maker, and correctly so since such a check is not a "falsely made" or "forged" document within the general law, even though it may be an invalid one.[23] Accordingly, this discussion of

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[23] See annotation, 41 A. L. R. 229, where many of the relevant cases are discussed. See also *United States* v. *Wentworth*, 11 Fed. 52 (D. N. H.); *In re Tully*, 20 Fed. 812, 815 (S. D. N. Y.); *United States* v. *Moore*, 60 Fed. 738 (N. D. N. Y.); *De Rose* v. *People*, 64 Colo. 332 (1918); *Goucher* v. *State*, 113 Nebr. 352, 354-355 (1925); *State* v. *Lamb*, 198 N. C. 423 (1930). Congress has apparently realized the legal distinction between a "false" and a "falsely made" document in previous legislation. See *United States* v. *Staats*, 8 How. 41.

There are cases to the contrary—for example *United States* v. *Tommasello*, 64 F. Supp. 467 (E. D. N. Y.)—but they represent the minority view.

This question does not appear to have been decided under the instant statute. The checks involved in *United States* v. *Wood*, 58 F. Supp. 451 (N. D. W. Va.), *United States* v. *Hopper*, 63 F. Supp. 612 (D. Ore.), and *United States* v. *Flores*, 66 F. Supp. 880 (Dist. Ct. Virgin Islands,

the sufficiency of the evidence is addressed only to the offenses charged in Counts One and Two of the indictment which relate to the checks signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner."

As previously stated (*ante*, pp. 11-12), two essential elements of the offense defined by the spurious securities provisions of section 3 of the National Stolen Property Act are (1) fraudulent intent and (2) knowledge of the spurious character of the securities. The Government presented no direct evidence of the existence of either of those elements. None was necessary, since intent and knowledge, on which direct evidence is seldom available, may be proved by circumstantial evidence. See *Gates* v. *United States*, 122 F. 2d 571, 575 (C. C. A. 10), certiorari denied, 314 U. S. 698; *Marshall* v. *United States*, 146 F. 2d 618, 620 (C. C. A. 9); *Rice* v. *United States*, 149 F. 2d 601, 603 (C. C. A. 10). However, a criminal conviction cannot stand on the basis of circumstantial evidence unless that evidence is not only consistent with guilt but also inconsistent with every reasonable hypothesis of innocence. See *Thompson* v. *United States*, 145 F. 2d 826 (C. C. A. 5), certiorari denied, 324 U. S. 861; *Crain* v. *United States*, 148 2d 615, 617 (C. C. A. 5); *United States* v. *Laffman*, 152 F. (2d) 393 (C. C. A. 3). The circumstantial evidence presented by the Government on the issues of fraudulent intent and knowledge of the spurious nature of the two checks does not meet that standard.

Taking the Government's evidence with respect to those issues most favorably to the Government, as must be done

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Div. St. Thomas and St. John), were drawn in the name of the defendants, but the question of whether they were "falsely made" was not discussed, the statute being held inapplicable on other grounds (see *ante*, pp. 17 and 22. It is not stated in *Clarke* v. *Sanford*, 156 F. 2d 115 (C. C. A. 5), pending on petition for a writ of certiorari, No. 397 at the present Term, and *Tolle* v. *Sanford*, 58 F. Supp. 695 (N. D. Ga.), whether the checks involved were made in the name of the defendants or in the name of another.

when its sufficiency is challenged (see *Glasser* v. *United States*, 315 U. S. 60, 80), it discloses only that (1) respondent negotiated two identically drawn checks, made in the name of another, one of which was represented to have been received in the course of his business, and both of which were dishonored by the drawee bank because the purported maker had no account, and (2) an investigation disclosed that the United States Department of Commerce had no agency or agent bearing the name of the purported maker—(the testimony based on that investigation was inadmissible hearsay as previously shown, *ante*, pp. 27-28). That is not enough to support an inference that respondent passed those two checks with knowledge that they were spurious and with fraudulent intent. The fact that a person passed a forged check or counterfeit money does not prove or justify an inference that he knew its spurious character or that he intended to defraud; something more than the naked act of passing must be shown. See *United States* v. *Ruffino*, 67 F. 2d 440 (C. C. A. 2); *Price* v. *United States*, 70 F. 2d 467 (C. C. A. 4); *People* v. *Cohen*, 343 Ill. 437 (1931); *People* v. *Chronister*, 379 Ill. 617 (1942); *Cook* v. *State*, 126 Tex. Cr. 454 (1934); *State* v. *Kozukonis*, 46 A. 2d 865, 869 (R. I., 1946). That something more is lacking here. Thus, there was no attempt to identify respondent's handwriting with that of the checks in question, or to show that respondent had engaged in any similar activities, or to prove the numerous aliases set forth in the indictment (R. 2-4). This deficiency in the Government's proof cannot be remedied by drawing an inference of guilty knowledge or intent from respondent's failure to take the stand and explain how he acquired the two checks. The Act of March 16, 1878, c. 37, 20 Stat. 30 (28 U. S. C. 632) forbids that. See *Bruno* v. *United States*, 308 U. S. 287; *Bradford* v. *United States*, 129 F. 2d 274, 278, 130 F. 2d 630 (C. C. A. 5), certiorari denied, 317 U. S. 683.

Respondent is therefore entitled to a new trial because the evidence of the Government is not sufficient to prove that he had the requisite knowledge and fraudulent intent.

Conclusion

For the reasons stated in Part I of the argument, the judgment below should be affirmed. In the event, however, that this Court should decide to reverse the judgment below, this Court should at the same time grant a new trial, without remanding the cause to the Circuit Court of Appeals for further proceedings, for the reasons stated in Part II of the argument.

Respectfully submitted,

JOHN H. PICKERING,
Counsel for Respondent.

(7143)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 53

UNITED STATES OF AMERICA,
Petitioner,

vs.

PAUL DAVIS SHERIDAN,
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION OF THE RESPONDENT FOR A REHEARING

JOHN H. PICKERING,
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616 Transportation Building,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 53

UNITED STATES OF AMERICA,
Petitioner,

vs.

PAUL DAVIS SHERIDAN,
Respondent

PETITION FOR A REHEARING

The above-named respondent, Paul Davis Sheridan, presents this, his petition for a rehearing of the above entitled cause in which the opinion of this Court was announced and its judgment entered on December 23, 1946,[1] and, in support thereof, respectfully shows:

I

The sufficiency of the evidence should not have been passed upon separately from the admissibility of the evidence.

Respondent in his brief (pp. 26-31) advanced two contentions in support of his argument for a new trial in the event the question presented by the Government's petition

[1] On motion of respondent the time within which to file a petition for a rehearing in this cause was extended to and including January 27, 1947, by an order of this Court entered January 15, 1947.

for a writ of certiorari should be resolved against him—(1) that reversible error was committed by the admission of certain hearsay testimony and (2) that the evidence was insufficient to support the verdict. This Court expressed no opinion as to the admissibility of the evidence, saying that it was "desirable [to] have the benefit of the views of the Circuit Court of Appeals," but nevertheless concluded that the evidence, assuming it was correctly stated in the record and was admissible, was sufficient (opinion, p. 13).

As this Court recognized, the two contentions are closely related and were not passed upon by the Circuit Court of Appeals (opinion, pp. 12-13). It would seem, therefore, that those contentions should not have been dealt with separately, and it is respectfully suggested that this Court should have passed upon both or neither of such contentions. And, if it is deemed desirable to have the views of the Circuit Court of Appeals with respect to the contention concerning admissibility, it would appear equally desirable to have the views of that Court on the contention concerning sufficiency, especially in view of the inadequacies of the evidence which are discussed in Part II of this petition.

II

In any event, the evidence should not have been found to be sufficient to sustain the conviction of respondent on counts 1 and 2 of the indictment.[2]

The evidence with respect to count 1 was that (R. 18):

(a) At about 12 noon of a business day respondent cashed at a store the check which was the subject of this count, stating that he had received it in the course of his business.

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[2] Count 3 of the indictment is not in issue in this case (opinion, p. 2).

(b) That check was deposited in the Jackson Bank and Trust Company of Jackson, Michigan, and was later returned unpaid.

The evidence with respect to count 2 was that (R. 18-19):

(a) At about 12 noon of the same business day respondent cashed at the National Bank of Jackson, Michigan, the check which was the subject of this count.

(b) An assistant cashier of that Bank stated that the records of that Bank (which were not produced) showed that such check was forwarded to the bank on which it was drawn and was later returned marked unpaid.

With respect to both counts, that same assistant cashier of the National Bank of Jackson, after qualifying as an expert, testified over respondent's objection that from the endorsements on the two checks they had been forwarded to Missouri and "had been returned unpaid to the forwarding bank marked no account." On cross examination the witness admitted that only one of the checks was deposited in his employer bank; "that he did not know of his own personal knowledge who wrote the words 'No Account' on the face of the checks or on the printed documents attached thereto, and that he did not know who placed the endorsements on the reverse side of the checks" (R. 19).

Also, an agent of the Federal Bureau of Investigation testified that his office had conducted an investigation in Washington, D. C., and that the United States Department of Commerce had no agency bearing the name of the maker of the checks (R. 19). On cross examination, however, the witness admitted that he had not personally conducted the investigation and based his statements on reports prepared by his Department (R. 20).

No attempt was made to identify respondent's handwriting with that on the checks, to show that respondent had ever engaged in passing forged checks, or otherwise to indicate that the checks had been made by respondent.

There is no evidence in the record with respect to either count from the drawee bank and there is nothing to show that the checks were actually received and endorsed by that bank. The checks, which were admitted in evidence (R. 18-19), are not reproduced in the printed record and are not contained in the files of the Clerk of this Court.

The opinion of this Court in this case states (opinion, p. 3): "It is not questioned that the checks were 'securities', that they were 'forged,' or that they were transported in interstate commerce." Contrary to the inferences of that statement, respondent did not concede that the checks were forged or were transported in interstate commerce, but only assumed that to be the case for the purpose of argument addressed to the question of the proper construction of the National Stolen Property Act, as amended (brief, pp. 12-13). In fact, respondent vigorously contended in the proceedings below that the evidence was not sufficient to show that the checks were forged or were transported in interstate commerce—see paragraphs 5, 6, 7, 8, 9 and 16 of the Motion for a New Trial (R. 8-10) and paragraphs 2 through 6 of the Notice of Appeal (R. 14-15).

It is believed that the foregoing analysis of the record and the evidence contained therein demonstrates that such evidence is consistent with innocence and hence insufficient to sustain the conviction since it merely discloses that respondent cashed two checks which were subsequently marked "No Account" by some unknown person or agency. Even if it is assumed that the checks were forged, the situation is not altered, for, as pointed out in the brief for respondent (p. 30), the circumstance that a person passes a

spurious check does not justify an inference that such person knew its spurious character or that he intended to defraud. If the law were otherwise, many innocent dupes of forgers might suffer.

In any event, however, it is respectfully submitted that in view of the inadequacies of the evidence on the present state of the record this Court should not have ruled in favor of its sufficiency without the benefit of the consideration of the point by the Circuit Court of Appeals.

III

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the judgment of this Court be, upon further consideration, reversed or appropriately modified.

Respectfully submitted,

JOHN H. PICKERING,
Counsel for Respondent.

Certificate of Counsel

I, John H. Pickering, counsel for respondent, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

JOHN H. PICKERING,
Counsel for Respondent.

pp. 1, 2, 12, 13

SUPREME COURT OF THE UNITED STATES

No. 53.—October Term, 1946.

The United States of America, Petitioner, v. Paul David Sheridan.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[December 23, 1946.]

Mr. Justice Rutledge delivered the opinion of the Court.

Sheridan was indicted on three counts for having violated § 3 of the National Stolen Property Act, as amended, 48 Stat. 795, 53 Stat. 1178, 18 U. S. C. §§ 413–419. A jury found him guilty on all counts.[1] On the authority of *Kann* v. *United States*, 323 U. S. 88, the Circuit Court of Appeals for the Sixth Circuit reversed the conviction. 152 F. 2d 75. Because of doubt as to the applicability of the *Kann* case, we granted certiorari.[2] 328 U. S. —.

Each count charged that Sheridan with fraudulent intent, caused the transportation in interstate commerce of a specified forged check, knowing it to have been forged. The proof[3] offered to support these counts showed that on July 19, 1943, in Jackson, Michigan, Sheridan cashed three checks, receiving for them either cash or cash and

[1] The record states that respondent "having been fully informed of his constitutional right to counsel, and having been asked whether he desired counsel assigned . . . stated he did not desire the assistance of counsel."

[2] Since certiorari was granted *Clarke* v. *Sanford*, 156 F. 2d 115, has been decided by the Fifth Circuit. It appears to be in conflict with the case at bar. See also *Tolle* v. *Sanford*, 58 F. Supp. 695.

[3] The proceedings at trial were not stenographically reported. Hence the parties prepared a statement of evidence from memory and from notes made during the course of the trial, and stipulated that it "substantially sets forth the testimony and evidence" presented by the Government. Upon approval of the District Court, the statement was made part of the record.

hotel service or goods. Two, which were made the basis of counts one and two ~~and three~~, were drawn on a bank in Cape Girardeau, Missouri, were payable to the order of "P. H. D. Sheridan," and purported to be drawn by "U. S. E. F. C. 14A, A. J. Davis, Commissioner." As will be seen, it is not necessary to consider the ~~first~~ third count, involving the other check.

From the endorsements it was clear that each check had been honored by banks at Jackson, Michigan. They forwarded the two checks drawn on the Missouri bank to it for payment. Both were marked "no account" and returned unpaid to the forwarding bank. An agent of the Federal Bureau of Investigation testified that his office had conducted an investigation in Washington, D. C., and that the United States Department of Commerce had no agent "U. S. E. F. C. 14A," nor one "A. J. Davis, Commissioner."

Sheridan was sentenced to five years' imprisonment on each count, the sentences to run concurrently. Hence, if the conviction on any is valid, it is unnecessary to consider the convictions on the other two. *Hirabayashi* v. *United States*, 320 U. S. 81, 85; *Pinkerton* v. *United States*, 328 U. S. —, n. 1. Accordingly, for the purposes of this decision it may be taken that only the convictions on counts one and two are in issue.[4]

I

The pertinent part of amended § 3 is set out in the margin.[5] Whether or not Sheridan's situation is within

[4] Count two is identical in effect with count one for the purposes of the argument made here. Count 3, however, involves a check signed by respondent in his own name as maker, and the Government—apparently of the view that such a check is not "altered" or "counterfeited"—states: "It is not clear that such a check is falsely made or forged within the general law."

[5] The pertinent text of § 3 is as follows: "Whoever shall transport or cause to be transported in interstate or foreign commerce any goods,

the intended coverage depends upon the answer to be given to two questions, namely: (1) Did he *cause* to be transported in interstate commerce any forged security; [6] (2) if so, did he do this "with unlawful or fraudulent intent"? It is in these respects that the section's meaning must be determined.

It is not questioned that the checks were "securities," that they were "forged," or that they were transported in interstate commerce.[7] It is urged, however, that Sheridan did not "cause" the transportation, since his objective was attained when he cashed the checks and what happened to them later was of no consequence to him or his plan. Hence it is concluded that he can be said to have "caused" the transportation only in the sense that it would not have occurred if he had not cashed the checks. This "but for" relation is considered insufficient since the statute is thought not simply to forbid use of interstate

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wares, or merchandise, securities, or money, of the value of $5,000 or more theretofore stolen, feloniously converted, or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, feloniously converted, or taken, *or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate* or foreign *commerce any falsely made, forged*, altered, or *counterfeited securities, knowing the same to have been falsely made, forged*, altered, or counterfeited, or whoever with unlawful or fraudulent intent shall transport, or cause to be transported in interstate or foreign commerce, any bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both. . . ." 48 Stat. 794, 795, as amended by 58 Stat. 1178. (Emphasis added.)

[6] The Act, § 2 (b), defines the term "securities" as including checks.

[7] The sufficiency of the evidence to prove the fact of forgery is challenged, *cf.* Part III, but for the purposes of the principal contentions, it is conceded *arguendo*.

commerce for transportation of forged securities without more; but to outlaw such use only when it contributes to or is an essential part of carrying out the intended specific fraud.

The second contention, though stated differently, comes substantially to the same thing. It is that, upon the assumption Sheridan may be held to have "caused" the transportation, still he did not do so with the requisite "unlawful or fraudulent intent," namely, to aid in completing the fraud. These views are bolstered by strong reliance on the *Kann* decision.

The Government answers with essentially two arguments. One is drawn primarily from the embodiment of amended § 3 in the National Stolen Property Act. It is shortly that the offense takes color and character from the other offenses with which it is associated in the context of § 3. Broadly, therefore, the Government says that the section as amended excludes forged securities from interstate transportation just as it does stolen goods,[4] money or securities, counterfeited securities and counterfeiting tools, or for that matter just as diseased cattle, lottery tickets, adulterated foods, etc., are excluded under various statutes related to the National Stolen Property Act.[5] More narrowly the Government argues that the

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[4] See Hearings before the Committee on the Judiciary on H. R. 10287, 70th Cong., 1st Sess.; H. Rep. 2528, 70th Cong., 2d Sess.; H. Rep. 1462, 73d Cong., 2d Sess.; S. Rep. 538, 73d Cong., 2d Sess.; H. Rep. 1599, 73d Cong., 2d Sess.; H. Rep. 422, 76th Cong., 1st Sess.; S. Rep. 674, 76th Cong., 1st Sess.

See note 5 for pertinent text of § 3.

[5] The National Stolen Property Act is said to be modeled after the National Motor Vehicle Theft Act, 41 Stat. 324. H. Rep. 2528, 70th Cong., 2d Sess., 4; H. Rep. 1462, 73d Cong., 2d Sess., 2.

See also the Animal Industry Act of 1884, 23 Stat. 31; the Act for the Suppression of Lottery Traffic of 1895, 28 Stat. 963; the Pure Food and Drug Act of 1906, 34 Stat. 768; the White Slave Traffic Act of 1910, 36 Stat. 825; the Webb-Kenyon Act of 1913, 37 Stat. 699.

transportation here necessarily aided or contributed to the perpetration of the fraud, if not by enabling respondent to secure possession originally of its fruits, then by giving him the necessary interval to make his escape; and thus to avoid either prosecution or restitution of the amount which early detection would make probable.

As an entirely fresh matter we should have difficulty in avoiding the force of the Government's views. The setting of the offense in amended § 3, together with the complete absence of anything in the legislative history to indicate that causing interstate transportation of forged securities was designed to be treated differently from causing the transportation of stolen goods, counterfeited securities, counterfeiting tools, etc., indicates plainly that transporting all these articles is to be treated in the same manner and, moreover, not in the limited sense for which respondent argues.

Congress had in mind preventing further frauds or the completion of frauds partially executed. But it also contemplated coming to the aid of the states in detecting and punishing criminals whose offenses are complete under state law, but who utilize the channels of interstate commerce to make a successful get away and thus make the state's detecting and punitive processes impotent.[10] This was indeed one of the most effective ways of preventing further frauds as well as irrevocable completion of partially executed ones. In the light of this purpose, we do not believe that Congress intended to restrict the pro-

[10] See H. Rep. 2528, 70th Cong., 2d Sess., 2: "Most of the States have laws covering the underlying principle of this proposed legislation, but it must be remembered that the jurisdiction of the State court does not reach into all of the States, especially when the matter of producing witnesses and bringing to court the proof is concerned." See also Hearings before the Committee on the Judiciary on H. R. 10287, *supra* note 8, *passim*.

hibited transportation of stolen goods, securities and money, or of counterfeited securities and counterfeiting tools, to situations where it would be effective to complete a specific fraud, in the sense of enabling the defrauder to secure possession initially of what he seeks. The intent was more general.

It is true that amended § 3 forbids the interstate transportation of forged and counterfeited securities, and forging and counterfeiting tools, "with unlawful or fraudulent intent," while the earlier proscribed transportation of stolen goods, securities and money is not required in terms to be done with such an intent, but only with knowledge that they have been stolen. This difference would seem to be entirely procedural, not substantive in character.[11] But, in any event, it is not controlling here. For the question remains whether the *Kann* case requires us to hold that "with unlawful or fraudulent intent" must be taken as restricting the forbidden transportation to cases where that element aids in originally securing the fruits of the fraud.

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[11] One who knowingly transports stolen goods would do so for one of three sorts of objects, namely: (1) to dispose of them or use them unlawfully; (2) to aid in concealing the theft, thus avoiding prosecution for himself or another; or (3) for some purpose wholly innocent, such as to turn them over to the police or the rightful owner.

In the first two instances there would be inherent in the act "unlawful intent" or "fraudulent intent," though proof of this might not be required apart from the proof of knowledge and absence of any showing of innocent purpose. Congress obviously did not intend to make criminal such an instance as the third. However, proof of the innocent intent might be required as matter of defense, the other elements being made out. In other words, it may well be doubted that adding the requirement "with unlawful or fraudulent intent" in the amended part of the section added anything to the substantive crime; for its effect is apparently only to require the state to allege and prove the unlawful or fraudulent intent, rather than to require the defendant to allege and prove his innocent purpose.

That case held that one alleged to be party to a fraudulent scheme could not be convicted under § 215 of the Criminal Code, 18 U. S. C. § 338, for using the mails "*for the purpose of executing such scheme,*" by proving that he or his associates cashed checks, receiving the proceeds at forwarding banks, which in turn mailed them to the drawee banks for collection, the checks being neither forged nor dishonored by the banks on which they were drawn. We think the case is distinguishable both on the statutes applied and on the facts. In order that comparison may be exact, we set forth the applicable wording of the two sections.

Section 215 of the Criminal Code, involved in the *Kann* case, is as follows: "Whoever, *having devised . . . any scheme* or artifice *to defraud,* or for obtaining money or property by means of false or fraudulent pretenses, representations, or promses, . . . *shall, for the purpose of executing such scheme* or artifice or attempting so to do, place, or cause to be placed, any letter . . . in any post office, or . . . cause to be delivered by mail according to the direction thereon . . . any such letter, . . . shall be fined not more than $1,000, or imprisoned not more than five years, or both." (Emphasis added.)

Amended § 3 of the Stolen Property Act reads pertinently, except for its important contextual coloring: [12] ". . . whoever *with unlawful or fraudulent intent* shall transport or cause to be transported in interstate . . . commerce any *falsely made, forged,* altered or counterfeited securities, *knowing the same to have been falsely made, forged,* altered, or counterfeited . . . shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both . . ." (Emphasis added.)

[12] See note 5.

Under § 215 the express requirement is that the mailing or causing to be delivered by mail shall be "for the purpose of executing such scheme or artifice or attempting to do so." There is no such explicit requirement in amended § 3. The wording there is that the interstate transportation shall be done "with unlawful or fraudulent intent." This different wording and the difference in the contextual settings of the proscriptions have meaning, we think, to make their effects distinct. We emphasize at the outset that amended § 3 is part of a scheme of federal-state cooperation in apprehending and punishing criminals, while § 215 deals only with a distinctly federal crime.

The language of amended § 3 is broader and less specific than that of § 215. The word "unlawful" in the former is not to be ignored. Nor is it to be rendered meaningless by identifying it with "fraudulent," more especially if the latter is to be endowed with the restrictive connotation, not expressly stated, of "for the purpose of executing such scheme." The word "unlawful" has no such narrow meaning. Literally it is broad enough to include any unlawful purpose, such as to aid in concealing what has been done and thus in avoiding prosecution and restoration.

Moreover, in the *Kann* setting, the quoted wording now sought to be read into amended § 3 was restricted to significance in relation to getting the proceeds of the checks *irrevocably*, and the subsequent mailing was held to have no significant influence in producing that effect or, therefore, upon completing the scheme; [12] or, moreover, toward concealing the crime.

Whether or not in those circumstances the mailing had concealing effects, the situation in this respect was very different from the one now presented. The checks there were not forged or altered. Here they were. There the

[12] It was as to this conclusion that four members of the Court dissented. 323 U. S. at 95.

checks were honored by the drawees after the mailing. Here they were dishonored after the transportation. There the payee—indorsers knew they would not be. In that case the mailing was much less likely to produce disclosure than was the transportation in this one. Accordingly the irrevocable completion of the scheme was much less affected by the mailing than it was by the transportation here. So also with any concealing effect of the transportation and, therefore, with any unlawful or fraudulent intent concerning it.

Indeed the *Kann* opinion recognized that in other circumstances a different result might be called for, even under the explicit and restricted purposive requirement of § 215. For in putting aside the cases sustaining convictions where use of the mails was "a means of concealment so that further frauds which are part of the scheme may be perpetrated," [14] the Court said: "In these the mailing has ordinarily had a much closer relation to further fraudulent conduct than has the mere clearing of a check, although it is conceivable that this alone, in some settings, would be enough." 323 U. S. at 95.

The Court was not dealing with the transmission of a forged check, certain to be dishonored after the mailing or transportation, or therefore with a situation in which the forbidden transmission was either so likely to result in disclosure of the crime or so obviously intended to provide an interval for escape before that disclosure would be made.[15] We cannot say that in circumstances such as are now here the same result would have been reached in applying § 215, in view of these differences and the express

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[14] *United States* v. *Lowe*, 115 F. 2d 596; *Dunham* v. *United States*, 125 F. 2d 895; *United States* v. *Riedel*, 126 F. 2d 81.

[15] The discovery of the scheme resulted from an examination of the allegedly defrauded corporation's books by a Government examiner, not as here from return of the checks unpaid by the forwarding bank.

reservation made for other situations involving greater possibilities for concealment.

This is enough to distinguish the *Kann* case. But we think, in addition, we would be altogether unjustified to rewrite the words "with unlawful or fraudulent intent" to mean "for the purpose of executing such scheme or artifice" in the sense of aiding to secure possession of the proceeds of the checks irrevocably, which was the meaning given that phrase in the *Kann* decision. Apart from the absence here of irrevocability in the legal sense, to do this would be to disregard what we think was Congress' clear purpose to make amended § 3, like the section in its original form, a means of apprehension and of punishment substantially, though not strictly in the legal sense, for past crimes of the sort specified in situations where interstate commerce was used as a method of defeating the state's exercise of those functions.

We cannot thus tear the transportation of forged checks from its setting and give it the distinct status, with reference to intent, as compared with the other forbidden transportations, which we think would result from respondent's reading. In amending § 3 Congress was extending the federal law enforcement arm to reach primarily the larger dealers in forged and counterfeited securities.[16] Not only forged checks, but forged or counterfeited bonds and coupons, as well as other forms of securities, and the instruments with which these are made, were the target. The legislative history shows that the purpose was to bring operators in these false securities into substantially the same reach of federal power as applied to others dealing in stolen goods, securities and money.[17] In one respect the object was to make their apprehension

[16] See the letter from the Attorney General to Senator Ashurst, Chairman of the Senate Committee on the Judiciary, set out in S. Rep. 674, 76th Cong., 1st Sess., 2.

[17] *Ibid.*

and conviction more easy, for the $5,000 minimum in value was intentionally omitted. The amendment was thus an extension, not a contraction of the preexisting provisions.

The purpose however was not to reach persons innocently, but knowingly, transporting the forbidden articles. Hence it was necessary to introduce safeguarding language. This was done by inserting "with unlawful or fraudulent intent." Broad as this was, it was sufficient for the purpose of excluding innocent transportation. We do not think it was also intended to safeguard the counterfeiter or professional forger, simply because the transportation alleged and proved does not aid him initially in securing the possession of the proceeds of his fraudulent dispositions. To take this view would nullify much of the amendment's intended effectiveness.

Nor can we treat forged checks differently from other securities, either because they are forged or because the forgery is done by "little fellows" who perhaps were not the primary aim of the congressional fire. The statute expressly includes checks.[18] It makes no distinction between large and small opefators. There is no room for implying such a distinction in view of the absence of the $5,000 limitation with respect to the transportation of forged checks. Whether or not Congress had in mind primarily such small scale transactions as Sheridan's, his operation was covered literally and we think purposively. Had this not been intended, appropriate exception could easily have been made.

If it is assumed that the evidence supports the conclusions on which the case has come here,[19] Sheridan perpetrated three frauds, including two forgeries, in one day. Forgery, thus repeated, is not amateurish, though the amounts obtained are small. Notoriously the crime done

[18] See note 6.

[19] See Part III.

once becomes habitual. And forgers are notoriously itinerant. Drawing the check upon an out-of-state bank, knowing it must be sent there for presentation, is an obviously facile way to delay and often to defeat apprehension, conviction and restoration of the illgotten gain. There are sound reasons therefore why Congress would wish not to exclude such persons, among them the very ease with which they may escape the state's grasp.

A word will dispose of the idea that Sheridan did not "cause" the transportation. Certainly he knew the checks would have to be sent to the Arkansas bank for collection. Given the proven forgery and uttering, no other conclusion would be possible. Necessarily, too, it would follow he intended the paying bank to send the checks there for that purpose. He knew they must cross state lines to be presented. One who induces another to do exactly what he intends, and does so by defrauding him, hardly can be held not to "cause" what is so done. The *Kann* case itself is authority for the Government on this point, in fact goes farther than is necessary here. For, as respected the same contention there advanced, the opinion said: ". . . we think it is a fair inference that those defendants who drew, or those who cashed, the checks believed that the banks which took them would mail them to the banks on which they were drawn, and, assuming petitioner participated in the scheme, their knowledge was his knowledge." 323 U. S. at 93. The statement was in answer to argument that Kann had not "caused" the mailing.

III

Since the Circuit Court of Appeals reversed the conviction on all counts on its view that the *Kann* case was controlling, it did not discuss respondent's other contentions. These are renewed here. They are, first, that the evidence was insufficient to support the verdict; and, second, that

certain testimony was inadmissible, including that of the federal agent to the effect that the Department of Commerce had no agency "U. S. E. F. C. 14A" nor one "A. J. Davis, Commissioner." On the facts the two contentions are closely related.[10]

We express no opinion as to the admissibility of the evidence. It is desirable that the litigants and this Court, if the case is again before us, have the benefit of the views of the Circuit Court of Appeals. See *United States* v. *Ballard*, 322 U. S. 78, 88. However, with respect to the first contention, upon the assumption that the record, as stipulated, correctly sets forth the evidence introduced by the Government and also that all the evidence was admissible, it follows from our discussion of the statute that the evidence was sufficient to send the case to the jury. The jury properly could have inferred that respondent had forged the checks in question;[11] that he therefore had knowledge of their spurious character; and, furthermore, that the checks were negotiated and transported with unlawful or fraudulent intent.

However, counsel assigned here for respondent calls our attention to the fact that the instructions given and the rulings on instructions requested do not appear in the record. He suggests that, if the cause should be remanded to the Circuit Court of Appeals for further proceedings, it would be appropriate for us to suggest to that court in the remand that it exercise its powers to secure a complete bill of exceptions, including the instructions given and all pertinent rulings in connection therewith.

That course has been followed in unusual circumstances. See *Miller* v. *United States*, 317 U. S. 192, 199–200; *Hel-*

[10] It is argued that excluding the evidence regarded as inadmissible would render the remaining evidence insufficient.

[11] That is, the checks which form the basis of counts 1 and 2. We express no opinion concerning the check on which count 3 was based. See note 4.

wig v. *United States*, 328 U. S. —. Such circumstances are presented on this record. Respondent defended himself at the trial. He did not have counsel on the appeal. The case is here *in forma pauperis*, and it is stated in his brief that "respondent is now confined in a Michigan state prison, is without funds and is unable to employ counsel of his own choice." Since the decision in *Miller* v. *United States*, *supra*, the Federal Rules of Criminal Procedure have taken effect [22] and expressly provide that they shall govern all proceedings pending at the effective date "so far as just and practicable." [23] Rule 59. Bills of exception are abolished.[24] Since the record contains a statement of the evidence, apparently the only serious deficiency is in the matters relating to the instructions, noted above. In these circumstances we think taking any corrective action, in this respect or otherwise, in the interest of seeing that substantial justice is done, well may be left to the judgment of the Court of Appeals.

The judgment is reversed and the cause is remanded to that court for further proceedings in conformity with this opinion.

THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS dissent.

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[22] 18 U. S. C. following § 687, effective March 21, 1946.

[23] In this case the indictment was filed on October 27, 1944; the jury verdict and judgment were filed on November 30, 1944; the judgment of the Circuit Court of Appeals was entered on November 19, 1945; and a Government petition for rehearing was denied on February 28, 1946. Certiorari was granted on May 13, 1946.

[24] See Rule 39 (c) and the note prepared under the direction of the Advisory Committee on Rules for Criminal Procedure. "The new rule supersedes Rule VII, VIII, and IX of the Criminal Appeals Rules of 1933, 292 U. S. 661. One of the results of the change is the abolition of bills of exception." S. Doc. 175, 79th Cong., 2d Sess., 62–63.